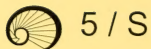


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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

January 28, 2013 5:30 P.M.

and AGENDA

Room 400 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
 - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
 - III. Discussion and possible action on draft amendments to the Commission's Regulations for Investigations and Enforcement Proceedings ("Enforcement Regulations"). At its November 26, 2012 meeting, the Commission approved a set of regulations to govern its handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the SOTF ("Sunshine Regulations"). To provide consistency, the Commission will consider amending its Enforcement Regulations to delete references to violations of the Sunshine Ordinance and to make other conforming changes. (Attachments: January 18, 2013 staff memorandum; draft amendments to Enforcement Regulations; Sunshine Regulations.)
 - IV. Discussion and possible action on a report submitted by Lisa Herrick, formerly of the San Jose City Attorney's Office. At its October 22, 2012 meeting regarding Ethics Complaint Nos. 08110816 and 09110816, the Commission asked Ms. Herrick to review email communications between the Ethics Commission and the Controller's Office to determine whether any of those communications were subject to disclosure. While Ms. Herrick did not identify any such communications between the Commission and the Controller, she did identify emails reflecting internal communications between Commission staff that she believes may be disclosed. At this meeting, the Commission will determine (1) whether such emails must be disclosed; and (2) if the answer is yes, whether the failure to release them was a willful violation of the Sunshine Ordinance. (Attachments: January 23, 2013 staff memorandum; Ms. Herrick's October 24, 2012 memo without enclosure.)
 - V. Discussion and possible action on Ethics Commission budget. By February 21, 2013, all departments must submit their budget requests to the Controller's Office. The Mayor's Budget Office has projected a \$129.1 million General Fund shortfall for FY 2013-14 and a \$263.2 million shortfall for FY 2014-15, based on current operations and staffing levels and estimated revenues. Departments have been

instructed to submit a budget including ongoing savings equal to 1.5 percent of base General Fund support for FY 2013-14 and an additional 1.5 percent of base General Fund support for FY 2014-15. At this meeting, the Commission will review staff's recommendations and possibly provide guidance in preparing the budget submission for FY 2013-14 and FY 2014-15. (Attachment: January 23, 2013 staff memorandum.)

VI. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission. Possible Closed Session.

- a. Public comment on all matters pertaining to Agenda Item VI, including whether to meet in closed session.
- b. Vote on whether to assert attorney-client privilege and meet in closed session under Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff. (Action.)
- c. Conference with Legal Counsel: Anticipated litigation as plaintiff. (Discussion and possible action.)

Number of possible cases: 1

- d. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation as plaintiff. (Discussion and possible action.)

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission moves (not) to disclose its closed session deliberations re: anticipated litigation.

VII. Discussion and possible action on minutes of the Commission's regular meeting of November 26, 2012. (Attachment: November 26, 2012 draft minutes.)

VIII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)

IX. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XI. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours. Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: www.sfgov.org/ethics.



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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: January 18, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Catherine Argumedo, Investigator/Legal Analyst
Garrett Chatfield, Investigator/Legal Analyst

Re: Regulations for Investigations and Enforcement Proceedings

INTRODUCTION

At its November 26, 2012 meeting, the Ethics Commission approved regulations intended to streamline the process for resolving complaints alleging violations for the Sunshine Ordinance, San Francisco Administrative Code Chapter 67, ("the Ordinance") that come before the Ethics Commission ("Commission"), to clarify ambiguities about the Commission's role and enforcement power under the Ordinance, to provide a standardized way in which staff must handle those complaints, and to ensure a transparent process that is open to the public. The approved regulations will be effective as of January 25, 2013.

CLEAN-UP LANGUAGE FOR EXISTING REGULATIONS

As the Commission has adopted the proposed Regulations for Violations of the Sunshine Ordinance, it should amend the existing Enforcement Regulations, which will continue to apply to all enforcement matters that do not involve allegations of Sunshine violations.

The proposed amendments would: a) clarify that all complaints alleging a violation of the Sunshine Ordinance will be governed by the new Sunshine regulations; b) delete references in the Enforcement Regulations to violations of the Sunshine Ordinance; and c) amend the definition of "business day" by adding the language "or a day on which the Commission office is closed for business" to conform with the definition in the approved Sunshine regulations.

Under Charter section 15.102, the Commission may adopt regulations addressing ordinances within its jurisdiction. A regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of the 60-day period, two-thirds of all members of the Board of Supervisors vote to veto the regulation.

Staff has attached copies of the following documents with this memorandum for reference: (1) Regulations for Violations of the Sunshine Ordinance, effective January 25, 2013; and (2) Proposed amended Regulations for Investigations and Enforcement Procedures.

Decision Point 1: Shall the Commission approve the addition of Section III.D. as set forth on page 3 of the Enforcement Regulations?

Decision Point 2: If the answer to Decision Point 1 is yes, shall the Commission approve the deletion of other references to the Sunshine Ordinance in the Enforcement Regulations? (*See strikethrough language, pages 2, 7, 15, and 16.*)

Decision Point 3: Shall the Commission approve the amended definition of "business day" in Section II.A. on page 1 of the Enforcement Regulations?

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION REGULATIONS FOR VIOLATIONS OF THE SUNSHINE ORDINANCE

Effective Date: January 25, 2013

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CHAPTER ONE

I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code section 54950, et seq.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.

J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).

O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

CHAPTER TWO

I. REFERRALS TO THE ETHICS COMMISSION

A. Matters to be heard in a Show Cause Hearing.

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:

- a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or
- b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.

2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

B. Scheduling of Show Cause Hearing.

1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

II. SHOW CAUSE HEARING

A. Public Hearing. The Show Cause Hearing shall be open to the public.

B. Standard of Proof. The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

C. Hearing Procedures.

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

D. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

E. Ethics Commission Orders.

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

- a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or
- b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or
- c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

F. Public Announcement.

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

CHAPTER THREE

**I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE
SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR
DEPARTMENT HEADS
OR
COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION
ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.**

A. Matters heard under this Chapter.

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.
2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.
3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.
4. This Chapter will govern:
 - a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and
 - b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.
5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

B. Scheduling of Hearing.

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

II. INVESTIGATION AND RECOMMENDATION

A. Factual Investigation.

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

B. Subpoenas.

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

C. Report and Recommendation.

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

- a. that Respondent(s) willfully violated the Sunshine Ordinance;

- b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or
- c. that Respondent(s) did not violate the Sunshine Ordinance.

D. Response to the Report and Recommendation.

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.
2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

III. PUBLIC HEARING

A. General Rules and Procedures.

1. The hearing shall be open to the public.
2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.
3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.
4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.
5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

B. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.
3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

C. Ethics Commission Orders.

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:
 - a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
 - b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
 - c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

CHAPTER FOUR

I. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

C. Oaths and Affirmations.

The Commission may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

E. Extensions of Time and Continuances.

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

F. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.
2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.
3. Delivery is effective upon the date of delivery, not the date of receipt.
4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

G. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

H. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.


II. SEVERABILITY

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

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**ETHICS COMMISSION
REGULATIONS FOR INVESTIGATIONS
AND ENFORCEMENT PROCEEDINGS**

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Includes technical amendments effective April 13, 2002;

*Streamlined Process for Complaints Alleging a Failure to File Campaign Finance Disclosure
Reports effective August 15, 2004; amendments effective October 10, 2005;
amendments effective March 10, 2006; amendments effective November 10, 2006; amendments
effective December 18, 2009; amendments effective January 8, 2010; and
amendments effective _____, 2013*

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I. PREAMBLE

These Regulations of the San Francisco Ethics Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of laws within the Commission's jurisdiction by:

1. Setting and maintaining objective standards for the investigation and prosecution of matters brought before the Commission;
2. Eliminating any political or improper influence in the investigation and prosecution of persons accused of ethics violations;
3. Protecting the privacy rights of those accused of ethics violations by maintaining the confidentiality of complaints filed with, and investigations conducted by, the Commission;
4. Setting and enforcing reasonable time limits within which enforcement proceedings should be completed;
5. Coordinating and sharing with other governmental agencies the responsibility for investigations and prosecutions of complaints, whenever consistent with the interests of justice;
6. Delegating to the Commission staff maximum discretion in the handling and resolution of complaints at staff level, while retaining oversight of those staff activities.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Business day" means any day other than a Saturday, Sunday, ~~or~~ City holiday, or a day on which the Commission office is closed for business.
- B. "City" means the City and County of San Francisco
- C. "Commission" means the Ethics Commission.
- D. "Complainant" means a person or entity that makes a complaint.
- E. "Credible" means offering reasonable grounds for being believed.
- F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next working day.

G. “Deliver” means transmit by U.S. mail or personal delivery to a person or entity or to an agent authorized to accept delivery on behalf of the person or entity. For purposes of these Regulations, delivery may be made by leaving copies of the material with a responsible person at either the residence or place of business of the person or entity to whom the material is directed. The Commission, the Executive Director or a respondent receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, following a determination of probable cause, the Commission Chair or designated Commissioner or hearing officer may order that delivery of briefs or other materials be accomplished by e-mail.

H. “Enforcement action” means an action pursuant to San Francisco Charter section C3.699-13.

I. “Exculpatory information” means information tending to show that the respondent is not guilty of the alleged violations.

J. “Executive Director” means the Executive Director of the Commission or the Executive Director’s designee.

K. “Mitigating information” means information tending to excuse or reduce the significance of the respondent’s conduct.

L. “Probable cause” means that based on the evidence presented there is reason to believe that the respondent committed a violation of law.

M. “Respondent” means a person or entity that is alleged in a complaint to have committed a violation of law.

N. “Stipulated order” means an order regarding a complaint the terms of which have been agreed to by both the Executive Director and the respondent.

O. “Violation of law” means a violation of City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics, and State laws relating to campaign finance, conflicts of interest, or governmental ethics, including, but not limited to: San Francisco Charter section 15.100 et seq. and Appendix C (ethics); the San Francisco Campaign and Governmental Conduct Code; *the San Francisco Sunshine Ordinance, S.F. Administrative Code Ch. 67*; the Political Reform Act of 1974, Government Code section 81000 et seq.; Government Code section 1090 et seq.; and Government Code section 3201, et seq.

III. COMPLAINTS

A. Formal Complaints.

1. Any person or entity may file a formal complaint alleging a violation of law. Formal complaints must be made in writing on a form specifically provided by the

Commission staff. Formal complaints must include the following information, upon the complainant's information and belief:

- (a) the name and address of the respondent;
- (b) the provision(s) of law allegedly violated;
- (c) the facts constituting the alleged violation(s);
- (d) the names and addresses of witnesses, if any; and
- (e) identification of documents or other evidence which may prove the facts constituting the alleged violation(s), if any.

2. Formal complaints may be filed anonymously. Any formal complaint not filed anonymously must be verified and signed by the complainant under penalty of perjury. If the complainant is an entity, the complaint must be verified and signed under penalty of perjury by an authorized officer or agent of the entity.

3. The Executive Director shall process and review all formal complaints, following the process described in Section IV.

B. Informal Complaints. Any person or entity may file an informal complaint alleging a violation of law by submitting a complaint by telephone, in person, or in writing other than on the form prescribed by the Commission. The Executive Director shall have no obligation but has the discretion to process and review informal complaints.

C. Complaints Initiated by the Executive Director. The Executive Director may initiate complaints. These complaints need not conform to the requirements for formal complaints specified in subsection A of this Section.

D. Complaints Alleging a Violation of the Sunshine Ordinance. Any complaint that alleges a violation of the San Francisco Sunshine Ordinance shall be governed by the Ethics Commission Regulations for Violations of the Sunshine Ordinance.

IV. REVIEW OF COMPLAINTS

A. Preliminary Review. The Executive Director must conduct a preliminary review of each formal complaint. This inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the respondent, and any other inquiry to determine whether a full investigation is warranted.

B. Dismissal of Complaint. Based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director may dismiss the complaint if the allegations do not warrant further action for reasons that may include, but are not limited to:

1. Credible evidence clearly refutes the allegations.
2. The allegations, if true, do not constitute a violation of law within the Commission's jurisdiction.
3. The complaint contains an expression of opinions, rather than specific allegations.
4. The allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.

If the Executive Director dismisses a complaint under this section, the Executive Director shall take no further action on the complaint, except that he or she may: 1) inform the complainant of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

The Executive Director shall provide a monthly summary to the Commission of each complaint dismissed, including the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

C. There is Reason to Believe a Violation May Have Occurred. If, based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director determines that there is reason to believe that a violation of law may have occurred, the Executive Director shall immediately forward the complaint to the District Attorney and the City Attorney.

Within ten business days after receipt of the complaint, the District Attorney and City Attorney shall inform the Commission whether the District Attorney or City Attorney has initiated or intends to pursue an investigation of the complaint.

If neither the District Attorney nor City Attorney intends to pursue an investigation, the Executive Director shall, within 14 days of such notification, inform the complainant in writing of the action, if any, that he or she has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Executive Director has not informed the complainant of the action that he or she has taken or plans to take on the complaint within 14 days, the complainant shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

V. CONDUCT OF INVESTIGATIONS

A. Factual Investigation. The Executive Director's investigation may include, but shall not be limited to, the interview of the respondent(s) and any witnesses, the deposition of respondent(s) and/or witnesses, and the review of documentary and other evidence.

B. Subpoenas. During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

VI. DETERMINATION THAT THERE IS NOT PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED

A. Executive Director Determination and Calendaring. If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, the Executive Director shall inform the Commission of that determination and provide clear and concise reasons supporting that determination. Thereafter any two or more members of the Commission may cause the item to be calendared for consideration by the full Commission in a closed session at the next Commission meeting held no sooner than ten days after the date the Executive Director informs the Commission of the Executive Director's determination. Commissioner's requests that a complaint be calendared for consideration by the full Commission must be received by the Executive Director not less than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

B. Commission Decision Not to Dismiss. If the matter is calendared for consideration by the Commission, and if the Commission decides that there is reason to believe that a violation of law may have occurred, the Commission shall direct the Executive Director either to investigate the matter further or to prepare a probable cause report and schedule a probable cause hearing.

C. Commission Decision to Dismiss. If the matter is calendared for consideration by the Commission, and if the Commission decides that there is not reason to believe that a violation of law may have occurred, the Commission shall take no further action on the complaint other than: 1) inform the complainant and respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

D. Commission Decision Not to Calendar. If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, and if after the Executive Director informs the Commission of the determination the Commission does not calendar the matter for consideration pursuant to section VI(A), the Executive Director shall take no further action except that he or she may: 1) inform the complainant and respondent of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

VII. RECOMMENDATION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED

A. Probable Cause Report. When the Executive Director determines there is probable cause to believe a violation of law has occurred, the Executive Director shall prepare a written "probable cause report" and schedule a probable cause hearing. The probable cause report shall contain a summary of the laws that the Executive Director believes the respondent(s) violated and evidence gathered through the investigation, including any exculpatory and mitigating information. In the probable cause report, the Executive Director may present statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of physical evidence. Unless otherwise permitted by the Commission Chair or the Commission Chair's designee for good cause shown, the probable cause report shall not exceed 25 pages excluding attachments.

B. Delivery of Probable Cause Report and Notice of Probable Cause Hearing. The Executive Director shall deliver to each respondent a copy of the probable cause report, with written notice of the date, time and location of the probable cause hearing, at least 45 days in advance of the hearing date. The notice shall inform each respondent that he or she has the right to be present and represented by counsel at the probable cause hearing.

C. Response to the Probable Cause Report.

1. Each respondent may submit a written response to the probable cause report. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information. Unless otherwise permitted by the Commission Chair or the Commission Chair's designee for good cause shown, the response shall not exceed 25 pages excluding attachments.

2. Each respondent who submits a response must deliver the response no later than 20 days prior to the date of the probable cause hearing. Unless the parties agree to deliver materials by email, the respondent must deliver a total of eight copies of the response to the Executive Director. The Executive Director must then immediately distribute copies of the response to the Commission. The respondent must also deliver one copy of the response to every other respondent named in the probable cause report.

D. Rebuttal . The Executive Director may submit evidence or argument in rebuttal to a response. If the Executive Director chooses to do so the Executive Director must deliver the rebuttal to the Commission and each respondent named in the probable cause report no later than seven days prior to the date of the probable cause hearing. Unless otherwise permitted by the Commission Chair or the Commission Chair's designee for good cause shown, the rebuttal shall not exceed ten pages excluding attachments.

**VIII. PROBABLE CAUSE HEARING; DETERMINATION OF
WHETHER AND HOW TO PROCEED WITH A HEARING ON
THE MERITS**

A. General Rules and Procedures.

1. Unless otherwise decided by the Commission, the Commission shall sit as a hearing panel to conduct the probable cause hearing. The Commission may assign one of its members to conduct the probable cause hearing and submit a report and recommendation to the Commission.

2. *Except for hearings regarding alleged willful violations of the Sunshine Ordinance, the hearing shall be closed to the public to the extent permitted by state law, unless the respondent requests that the probable cause hearing be held in public. Probable cause hearings regarding alleged willful violations of the Sunshine Ordinance shall be held at a public meeting unless otherwise provided in state or local law.*

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the probable cause hearing. Neither the Executive Director nor the respondent(s) may present live witness testimony at the probable cause hearing.

4. The Commission may find that there is probable cause to believe a violation of law has occurred only if a person of ordinary caution and prudence would conclude, based on the evidence, that there is a reasonable ground to suspect that the respondent has committed the violation.

B. Probable Cause Determination.

1. If the Commission as a whole conducts the probable cause hearing, the Commission shall make the probable cause determination no later than 45 days after the date the hearing is concluded. If the Commission assigns one of its members to conduct the probable cause hearing, the assigned member shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing concludes, and the Commission shall make the probable cause determination no later than 45 days after the assigned member delivers his or her report and recommendation.

2. A determination that there is probable cause to believe that a violation of law has occurred shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard or read the testimony (either in person or by listening to a tape or reading the transcript prepared by a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.

3. The Commission shall not make a finding of probable cause if it is presented with clear and convincing evidence that, prior to the alleged violation:

(a) the respondent had requested and obtained a written opinion from the Commission;

(b) the respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case;

(c) the Commission or its staff issued a formal, written opinion with which both the District Attorney and City Attorney concurred; and

(d) the respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the formal, written opinion of the Commission.

4. If the Commission determines that there is not probable cause to believe a violation has occurred, the Commission shall dismiss the complaint and take no further action on the complaint, except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

5. If the Commission determines that there is probable cause to believe a violation of law has occurred, the Commission shall announce its determination in open session. The announcement shall contain a summary of the allegations for which the Commission determines there is probable cause to believe a violation of law has occurred and a cautionary statement that each respondent is presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

C. Determination How to Proceed with Hearing on Merits.

1. Following a determination of probable cause by the Commission, the Commission shall proceed with a hearing on the merits of the complaint. Unless otherwise decided by the Commission, the Commission shall sit as the hearing panel to hear the merits of the case. The Commission may also sit as the hearing panel to hear the case, with an outside hearing officer presiding, or designate an individual Commissioner or an outside hearing officer to hear the case and file a report and recommendation for decision by the Commission.

2. The Commission shall provide for resolution of preliminary matters in advance of the hearing on the merits. Unless otherwise decided by the Commission, the Commission Chair shall hear and decide preliminary matters pursuant to Section X, subsection B. The Commission alternatively may designate an individual Commissioner or an outside hearing officer to hear and decide preliminary matters.

3. The Commissioner or hearing officer assigned to decide preliminary matters shall also be authorized to provide for the issuance of subpoenas.

D. Amending Probable Cause Determination.

Before the Executive Director has scheduled the hearing on the merits, or no later than 60 days prior to the date the hearing on the merits is scheduled to commence, the Executive Director may request that the Commission amend the probable cause determination to add or amend allegations or charges against the respondent. If the Executive Director seeks to amend the probable cause determination, the Executive Director, the

respondent(s) and the Commission shall follow the procedures set forth in Sections VII and VIII, and the Executive Director shall issue an amended accusation and notice of the hearing on the merits following the procedures set forth in Section IX.

IX. ISSUANCE OF ACCUSATION; SCHEDULING AND NOTICE OF HEARING ON MERITS

A. Issuance of Accusation.

Except as provided in Section XI, following a determination of probable cause by the Commission, the Executive Director shall issue an accusation. The accusation shall clearly specify the provisions of the laws that each respondent allegedly violated and shall set forth the acts or omissions with which each respondent is charged. The accusation shall list only those charges for which the Commission made a determination of probable cause. The Executive Director shall deliver a copy of the accusation to each respondent ten days after the Commission's probable cause determination. The accusation is a public document.

The Executive Director shall present the case in support of the accusation at the hearing on the merits. The accusation shall be the charging document for the purpose of the hearing on the merits. The commission shall not find that any respondent has committed a violation of law if the accusation does not allege such a violation and provide the respondent notice of the basis for the allegation.

B. Scheduling and Notice of Hearing on Merits.

The Executive Director shall schedule the hearing on the merits, and deliver written notice of the date, time and location of the commencement of the hearing to each respondent at least 45 days prior to the commencement of the hearing. The notice shall be in substantially the following form:

"You are hereby notified that a hearing will be held before the Ethics Commission (or name of hearing officer or assigned Commissioner) at ___ on the ___ day of ___, 20___, at the hour of ___, at (location of ___), upon the charges made in the accusation. You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and will be given an opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Commission on or before (date)."

X. DISCOVERY; HEARING BRIEFS; PRELIMINARY MATTERS.

A. Discovery. The Executive Director and each respondent shall be entitled to pre-hearing discovery in accordance with the provisions of California Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

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B. Resolution of Preliminary and Procedural Matters.

1. The Executive Director and any respondent may present preliminary matters, unrelated to the merits of the accusation, to the assigned Commissioner or hearing officer designated to hear such matters pursuant to Section VIII, subsection C(2). Preliminary matters may include, but are not limited to, the following:

- (a) procedural matters;
- (b) disqualification of any member of the Commission from participation in the hearing on the merits;
- (c) requests for dismissal of any charges in the accusation because, even if the allegations set forth in the accusation are true, those charges do not state a violation of law as alleged;
- (d) discovery motions; and
- (e) any other matters not related to the truth or falsity of the factual allegations in the accusation.

2. A request for resolution of preliminary matters must be delivered to the assigned Commissioner or hearing officer no later than 25 days prior to the commencement of a hearing on the merits. At the same time that the request is delivered to the assigned Commissioner or hearing officer, the requester must deliver copies of the request to the Executive Director and every other respondent named in the accusation.

3. The request for resolution of preliminary matters may contain legal arguments and a summary of the facts underlying the request. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the request shall not exceed 15 pages excluding attachments.

4. The Executive Director or each respondent may submit a written opposition to a request for resolution of preliminary matters. The opposition must be delivered to the assigned Commissioner or hearing officer no later than ten days after the date of delivery of the request. At the same time that the opposition is delivered to the assigned Commissioner or hearing officer, the party submitting the opposition must deliver copies of the opposition to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the opposition shall not exceed ten pages excluding attachments.

5. The requestor may submit a written reply to an opposition. The reply must be delivered to the assigned Commissioner or hearing officer no later than five days after the date of delivery of the opposition. At the same time that the reply is delivered to the assigned Commissioner or hearing officer, the party submitting the reply must deliver copies of the reply to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the reply shall not exceed five pages excluding attachments.

6. The assigned Commissioner or hearing officer shall issue a written decision on each request for resolution of preliminary matters no later than five days prior to the commencement of the hearing on the merits.

7. The Executive Director or any respondent may submit a written request for reconsideration, by the Commission, assigned Commissioner or hearing officer who will conduct the hearing on the merits, of any decision made on preliminary matters. A party requesting reconsideration shall deliver the request on the Commission, assigned Commissioner or hearing officer, and the Executive Director and any other respondent, no less than three days prior to the hearing on the merits.

8. Before or during the hearing on the merits, the Executive Director and any respondent may file a request for resolution of a procedural matter affecting the conduct of the hearing. This request shall be directed to the Commissioner or hearing officer designated to hear preliminary matters pursuant to Section VIII, subsection C(2). The request shall follow the process outlined by paragraphs 2 through 5 of this section, except that the request may be submitted later than 25 days prior to the commencement of the hearing on the merits but may not be submitted after the conclusion of the hearing on the merits. If either party requests a written decision, the assigned Commissioner or hearing officer shall issue a written decision no later than 20 days after the date of the request.

C. Hearing Briefs.

The Executive Director shall, and any respondent may, submit a hearing brief. The brief shall outline significant legal arguments and list evidence and witnesses to be presented at the hearing. The brief is not required to list anticipated rebuttal evidence or rebuttal witnesses. Unless the Commission or outside hearing officer agrees to accept briefs by email, six copies of the brief shall be delivered to the Commission, assigned Commissioner, or outside hearing officer no later than 20 days prior to the date the hearing on the merits commences. The Executive Director shall deliver a copy of the Executive Director's brief to each respondent named in the accusation. Each respondent who chooses to submit a brief shall deliver copies of the respondent's brief to the Executive Director and to every other respondent named in the accusation.

D. Issuance of Hearing Subpoenas.

The Executive Director and any respondent named in the accusation may request the issuance of subpoenas for the attendance of witnesses and for the production of documents at the hearing on the merits. Requests for the issuance of subpoenas should be delivered no later than 20 days prior to the commencement of the hearing on the merits. The request shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the request is for a document subpoena, it shall be accompanied by a declaration which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued upon approval of the Commission or the Commissioner or hearing officer designated by Section VIII, subsection C(2).

**XI. DISCOVERY OF EXCULPATORY INFORMATION AND
DISMISSAL OF COMPLAINT PRIOR TO HEARING ON
THE MERITS**

A. Discovery of Exculpatory Information. Following the delivery of the probable cause report, if the Executive Director is aware of or discovers any exculpatory information with respect to any charge listed in the accusation, the Executive Director shall notify the Commission and the respondent(s) of this information.

B. Dismissal Recommendation. After a determination of probable cause and before a hearing on the merits, the Executive Director may recommend that the Commission dismiss the complaint. The Executive Director may make such a recommendation based on the Executive Director's discovery of exculpatory information or other good cause. In such situations, if he or she has not done so already, the Executive Director is not required to issue an accusation and the Commission need not hold a hearing on the merits, unless the Commission overrides the Executive Director's dismissal recommendation.

C. Commission Consideration of Dismissal Recommendation. The Executive Director shall present the dismissal recommendation and the reasons for the recommendation to the Commission in a public memorandum. Thereafter, any two or more members of the Commission may cause the complaint to be calendared for consideration by the full Commission in open session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the Executive Director's recommendation. A Commissioner's request that a complaint be calendared must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements. If two or more members of the Commission do not cause the complaint to be calendared, or if in open session a majority of the Commission does not vote to override the dismissal recommendation, the Commission shall take no further action on the complaint except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's

discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for it appropriate action.

D. Dismissal or Removal of Specific Charges. After a determination of probable cause and before a hearing on the merits, the Executive Director may decide not to proceed with a specific charge listed in the accusation. If the Executive Director makes such a determination, the Executive Director shall immediately notify in writing the respondent(s) and the Commission or hearing officer. If the Executive Director provides such notice, the Commission shall not find a violation based on the specific charge or violation after a hearing on the merits.

XII. HEARING ON THE MERITS

A. General Rules and Procedures.

1. Public Hearing

The hearing on the merits shall be open to the public, provided that either the Executive Director or the respondent(s) may request that the Commission, assigned Commissioner or hearing officer exclude any witnesses.

2. Standard of Proof

The Commission may determine that a respondent has committed a violation of law only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the respondent has committed the violation.

3. Rules of Evidence

All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act shall be admissible in a hearing on the merits. The Executive Director and each respondent shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine and impeach witnesses, and to rebut any evidence presented.

4. Exhibits

Where both parties stipulate to the admissibility of an exhibit, the parties shall so advise the Commission in advance of the hearing. For all other exhibits, each party may move to admit a particular exhibit at the hearing, and the other party shall have an opportunity to object prior to the ruling on the admission.

5. Witnesses

Witnesses shall be examined by the parties as follows: direct examination, cross-examination, re-direct. After the parties have concluded their examination of a witness, Commissioners shall have an opportunity to pose questions to the witness.

6. Oral Argument

At the hearing, the Executive Director and each respondent shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

B. Finding of Violation.

If the Commission as a whole conducts the hearing on the merits, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether the respondent has committed a violation of law. If the Commission assigns one of its members or an outside hearing officer to conduct the hearing on the merits, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded. Thereafter, the Commission shall determine, no later than 45 days after the date the report and recommendation is delivered, whether the respondent has committed a violation of law.

The votes of at least three Commissioners are required to find a violation of law. The finding of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

C. Administrative Orders and Penalties.

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation. The Commission may issue orders and penalties requiring the respondent(s) to:

- (a) cease and desist the violation;
- (b) file any reports, statements or other documents or information required by law; and/or
- (c) pay a monetary penalty to the general fund of the City in an amount permitted under the law that the Commission finds the respondent has violated, or, if the law does not specify the amount of the monetary penalty, in an amount up to five thousand dollars (\$5,000) for each violation, or three times the amount which the respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

2. When deciding on an order and penalties, the Commission shall consider all the relevant circumstances surrounding the case, including but not limited to:

- (a) the severity of the violation;
- (b) the presence or absence of any intention to conceal, deceive, or mislead;
- (c) whether the violation was deliberate, negligent or inadvertent;
- (d) whether the violation was an isolated incident or part of a pattern;
- (e) whether the respondent has a prior record of violations of law; and
- (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

3. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the respondent within 90 days of the Commission's decision.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the respondent has committed a violation, or if the Commission determines that there is sufficient evidence to establish that the respondent has not committed a violation, the Commission shall publicly announce this fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each respondent and complainant of the Commission's determination.

XIII. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed, no Commissioner or staff member shall engage in oral or written communications outside of a Commission meeting, interview or settlement conference regarding the merits of an enforcement action with the respondent or complainant or any person communicating on behalf of the respondent or complainant unless the communication is necessary for the conduct of the investigation or enforcement action.

B. Access to Complaints and Related Documents and Deliberations.

1. ~~*Except as described in subsection 3 for complaints alleging violations of the San Francisco Sunshine Ordinance, n*~~ No complaint, response thereto, investigative file or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed except as necessary to the conduct of an investigation, prior to a probable cause determination.

2. After a determination of probable cause, the probable report, the response, and the rebuttal shall be confidential, unless the respondent requested that the probable cause hearing be public. All investigative documents, including notes and memoranda, created prior to the probable cause determination, such as the complaint, shall remain confidential, except that the Executive Director may provide a copy of the complaint to the respondent(s) if the Executive Director determines that disclosure is necessary to the conduct of the investigation. All investigative documents, including notes and memoranda, created by the Executive Director and his or her staff after the probable cause determination shall be confidential, except for the accusation, until any such documents are either delivered to the Commission or respondent(s), introduced as evidence or an exhibit, or distributed for public consumption, such as an agenda or press release.

~~3. For complaints alleging willful violations of the San Francisco Sunshine Ordinance (S.F. Administrative Code Ch. 67), no complaint, investigative file or information contained therein, or Commissioner or staff deliberations shall be disclosed except as necessary to the conduct of an investigation or as required by the California Public Records Act (Government Code section 6250, et seq.) or the San Francisco Sunshine Ordinance. Deliberations by the Commission regarding such a complaint shall be conducted at a public meeting. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff shall not be disclosed until after the dismissal of a complaint or the Commission has issued its final decision following the hearing on the merits.~~

43. In addition to the prohibition on ex parte communications stated in Section XIII, subsection A, except at a public meeting of the Commission, Commissioners are prohibited, prior to a final determination on the merits of a complaint, from engaging in oral or written communications regarding the merits of a complaint or enforcement action with any person or entity unless the communication is necessary for the conduct of the investigation or enforcement action. After a final determination on the merits of a complaint, Commissioners may discuss matters in the public record.

C. Oaths and Affirmations.

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission of the designation no later than the next business day.

E. Powers and Duties of Hearing Officers.

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.

2. When an individual Commissioner or a hearing officer is assigned to hear and decide preliminary matters in advance of a hearing on the merits, he or she shall make an actual determination. This determination may be reviewed by the Commission upon request by the Executive Director or a respondent, pursuant to the procedures specified in Section X, subsection B(7).

3. When an individual Commissioner or a hearing officer is assigned to conduct a probable cause hearing or hearing on the merits, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, and each respondent no later than 30 days after the date the hearing is concluded. Thereafter, the Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.

4. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

F. Statute of Limitations.

1. Unless otherwise stated in local or State law, for statute of limitations purposes, an action or proceeding for administrative penalties is brought or commenced by the Executive Director on the date the Executive Director delivers the probable cause report.

2. If there is no statute of limitations for violations of the law allegedly violated, the probable cause report must be delivered within four years of the date of events which form the basis of the complaint, or the date that the events constituting the basis of the complaint were discovered by the Ethics Commission, whichever is later.

G. Extensions of Time and Continuances.

Whenever the Executive Director, a respondent, or a witness is required to complete an act or produce materials pursuant to these Regulations, that party may request an extension of time. Requests for extensions of time may be made to the Commission Chair or the Commission Chair's designee. The requester must deliver the request to the Commission Chair or designee and provide a copy of the request to all other parties no later than ten business days before the deadline to complete an act or produce materials.

The Commission Chair or designee shall have the discretion to consider untimely requests. The Commission Chair or designee shall approve or deny the request within five business days of the submission of the request. The Commission Chair or designee may grant the request only upon a showing of good cause.

The Executive Director or any respondent may request the continuance of a hearing date. The requester must deliver the request to the Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five working days of the submission of the request. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request only upon a showing of good cause.

H. Referrals to Other Enforcement Agencies.

At any time after the filing of a complaint, the Commission or Executive Director may refer the matter to another government agency or official if the Commission or Executive Director determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

A determination by the Executive Director or the Commission that no further action should be taken on a matter shall not prevent any other government agency from initiating its own enforcement action, including disciplinary action, based on the same allegations and facts.

I. Recordings and Transcripts.

Every probable cause hearing and hearing on the merits shall be tape-recorded. Where the Commission assigns a Commissioner to conduct a probable cause hearing, and where the Commission assigns a Commissioner or hearing officer to conduct a hearing on the merits, the hearing shall also be recorded stenographically. The Commission shall retain the tapes until the opportunity for legal challenge has been exhausted. Copies of a tape shall be available to the respondent upon request.

J. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these regulations require delivery to a respondent or his or her committee, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection F, to:

- a. If the respondent is a City employee, to the address listed with the (Controller/ Payroll) as the employee's current address.
- b. If the respondent is a former City employee, to the address listed with the City's retirement system.
- c. If the respondent is a current or former candidate or committee registered with the Ethics Commission, to the address provided to the Ethics Commission by that candidate or committee.
- d. If subsections (a) through (c) are not applicable, to an address reasonably calculated to give notice to and reach the respondent.

It is the responsibility of City employees, or candidates or committees who file reports with the Ethics Commission, to maintain accurate addresses with relevant City Departments. The Executive Director therefore may rely on those addresses in carrying out the objectives of the Commission.

3. Delivery is effective upon the date of delivery, not the date of receipt.

K. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

L. Public Summary of Dismissed Complaints.

Notwithstanding any other provision of these regulations, the Executive Director may provide a public summary of dismissed complaints. Such summary may include, but need not be limited to, a generic description of each dismissed complaint and a summary of the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

M. Conclusion of Hearing on the Merits.

For the purposes of these Regulations, a hearing on the merits concludes on the last date on which the Commission hears argument or testimony in the proceeding.

XIV. STIPULATED ORDERS

A. At any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision and order. Any proposed stipulation, decision and order shall explicitly state that:

- (1) the proposed stipulation, decision and order is subject to approval by the Commission;
- (2) the respondent knowingly and voluntarily waives any and all procedural rights under the law and these Regulations;
- (3) the respondent understands and acknowledges that the stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- (4) the respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and
- (5) in the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

B. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13.

C. Once the Executive Director enters into a stipulated agreement with a respondent, the Executive Director shall inform the Commission of this stipulation. Thereafter, any two or more members of the Commission may cause the stipulation to be calendared for consideration by the full Commission in a closed session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the stipulated agreement. If there is a vacancy on the Commission or if a member must recuse himself or herself from consideration of the stipulated order, one member of the Commission may cause the stipulation to be calendared. Commissioners' requests that a stipulated agreement be calendared for consideration by the full Commission must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

D. Stipulated orders must be approved by the Commission and, upon approval, must be announced publicly. The stipulated order shall have the full force of an order of the Commission.

XV. SEVERABILITY

If any provision of these Regulations, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.





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CITY AND COUNTY OF SAN FRANCISCO

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COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: January 23, 2013
To: Members, Ethics Commission
From: Mabel Ng, Deputy Executive Director
Re: San Jose City Attorney Report – Complaint Nos. 08-110816 and 09-110816

At its October 22, 2012, regular meeting, the Commission held a discussion regarding Ethics Complaint Nos. 08-110816 and 09-110816. Patrick Monette-Shaw had requested from the Commission all “written communication(s) between the Ethics Commission and the City Controller’s Office (including the City Controller, the City Services Auditor, and/or the Controller’s Whistleblower Program) regarding this complaint; . . . The Ethics Commission investigative file(s) regarding the patient gift fund complaint; [and] . . . Any closing memo(s) authored by the Ethics Commission staff regarding this LHH patient gift fund complaint.” Mr. Monette-Shaw filed complaints with the Sunshine Ordinance Task Force when Ethics Commission staff and the Controller’s Office did not disclose the requested records.

At the October 22 meeting, the Commission made the determination that the documents at issue were exempt from disclosure. Specifically, the Commission found that the Executive Director, John St. Croix, and Tonia Lediju, of the Controller’s Office Whistleblower Program, did not willfully fail to comply with the Sunshine Ordinance with respect to the investigative file and closing memo. The Commission’s determination was final, and the issue regarding whether those documents were properly withheld was resolved.

However, the Commission requested that then-San Jose Deputy City Attorney Lisa Herrick review email communications between the Ethics Commission and the Controller to determine whether any of those communications were not exempt from disclosure. This item is calendared so that the Commission may discuss Ms. Herrick’s report.

Ms. Herrick did not identify any communications between the Ethics Commission and the Controller that were not exempt from disclosure. However, she did identify emails reflecting internal communications between Ethics Commission staff that she believed may be disclosed. Those email communications were previously forwarded to you. At this meeting, the Commission will determine (1) whether such emails must be

disclosed; and (2) if the answer is yes, whether the failure to release them was a willful violation of the Sunshine Ordinance.

Ms. Herrick's report without the emails is attached to this memorandum.

Memorandum

TO: SAN FRANCISCO
ETHICS COMMISSION

SUBJECT: Referral from Sunshine
Ordinance Task Force re
Ethics Complaint No. 09-110816

FROM: LISA HERRICK
Sr. Deputy City Attorney

DATE: October 24, 2012

SUPPLEMENTAL MEMO

At the hearing on Ethics Complaint No. 09-110816 on October 22, 2012, the Ethics Commission directed me to review the written correspondence between the Ethics Commission and the City Controller's Office.

I reviewed twenty-four (24) pages of email correspondence, some of which include email strings with duplicate emails. Most of the email is confidential pursuant to San Francisco City Charter Section F1.110(b), which provides:

Notwithstanding any other provision of this Charter, or any ordinance or regulation of the City and County of San Francisco, and except to the extent required by state or federal law, all drafts, notes, preliminary reports of Controller's benchmark studies, audits, investigations and other reports shall be confidential.

However, I am enclosing three (3) pages of email that may be disclosed; the emails are internal communications within the Ethics Commission which relate to communications between the Commission and the Controller's Office. These emails are not records of any investigation by the Ethics Commission which are protected under Appendix C3.699-13(a) of the San Francisco City Charter:

The investigation shall be conducted in a confidential manner. Records of any investigation shall be considered confidential information to the extent permitted by state law. ...

I have redacted all confidential information.

Memo to San Francisco Ethics Commission
Re: Complaint No. 09-110816
October 24, 2012
Page 2 of 2

RICHARD DOYLE
City Attorney

By: 
LISA HERRICK
Sr. Deputy City Attorney

For questions, please contact Lisa Herrick, Sr. Deputy City Attorney, at 408-535-1900.¹

¹ I am leaving the San Jose City Attorney's Office on October 26, 2012. As of October 30, 2012, my title will be General Counsel, Santa Clara County Superior Court. Staff to the Ethics Commission will be able to contact me if the Commission wishes to discuss this matter further.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

AMIEENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Memorandum

To: Members, Ethics Commission
From: John St. Croix, Executive Director
Re: Fiscal Year 2013/2014 Budget Request
Date: January 23, 2012

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As is usual, the Mayor's office has provided a budget target to all City departments, which have been asked to submit a savings equal to 1.5 percent of the department's base General Fund support for the upcoming fiscal year and another 1.5 percent for the following year. This would mean a cut of \$33,844 for each of FY 13-14 and FY 14-15.

Our budget in the current fiscal year breaks down as follows:

Operating budget	\$2,356,259
<u>Election Campaign Fund</u>	<u>5,613,030</u>
	\$7,969,289

It has been the Commission's common practice to produce a budget submission that respects both the reality of the City's fiscal difficulties and the independence of the Ethics Commission. We submitted a budget request that did not include the requested cuts but also did not request any increase in funding.

Please note that should the Commission decide to accept the cuts, or should the City require the Ethics Commission to accept the cuts, 100 percent of the funds will have to come from salaries and benefits. There are insufficient funds remaining in other accounts to meet the requested targets. The amount of the intended cut is not sizeable, but it will create a small deficit that will have to be overcome.

The balance in the Election Campaign Fund as of December 31, 2012 is \$4,445,023.

The historical funding of the Ethics Commission is as follows:

FY 94 - 95	157,000
FY 95 - 96	261,000
FY 96 - 97	313,274

FY 97 - 98	394,184
FY 98 - 99	475,646
FY 99 - 00	610,931
FY 00 - 01	727,787
FY 01 - 02	877,740
FY 02 - 03	1,156,295
FY 03 - 04	909,518
FY 04 - 05	1,052,389
FY 05 - 06	1,382,441
FY 06 - 07	8,416,109 (1,711,835 non-grant funding)*
FY 07 - 08	3,592,078 (2,261,877 non-grant funding)**
FY 08 - 09	5,453,874 (2,241,818 non-grant funding)
FY 09 - 10	6,011,566 (2,283,368 non-grant funding)***
FY 10 - 11	4,188,720 (2,212,226 non-grant funding)****
FY 11 - 12	4,269,979 (2,259,979 non-grant funding)*****
FY 12 - 13	4,155,547 (55,547 non-grant funding)*****

*Includes \$6,704,274 front-loaded funding for Mayoral Election Campaign Fund

**Includes \$1,358,747 annual set-aside for the Election Campaign Fund

***Does not include \$85,205 mid-year budget reduction; includes \$1,783,858 restoration of funds previously taken from Election Campaign Fund

****Does not include \$53,256 mid-year reduction

*****Does not include \$4,079,107 in repayments to Election Campaign Fund from prior-year loans to the General Fund

*****Figures are from the Annual Appropriation Ordinance – the remainder of the Commission's operating budget came from the Election Campaign Fund (ECF). As of June 30, 2012, the ECF had \$7,713,722; the City took back \$4 million and gave back to the ECF \$1,899,308. Thus, at the beginning of FY 12-13, the ECF had \$5,613,030.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of January 28, 2013

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CHAIRPERSON

JAMIE S. S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

1. November 6, 2012 election.

For the November 6, 2012 election, the Commission disbursed a total of \$1,228,097 in public funds to 12 candidates eligible to receive public financing.

According to Third Party Disclosure Forms filed with the Commission, third party spending to support or oppose candidates on the November 6 ballot totaled almost \$1.7 million. In 2010 when 22 candidates qualified to receive public funding, third party spending also totaled approximately \$1.7 million.

Staff continues to conduct outreach to candidates to inform them about rules relating to termination of committees, return of unexpended funds and other relevant matters. Candidates who received public funding will be audited.

2. Investigation and enforcement program.

As of January 16, 2013, there are 30 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	16
Conflict of Interest	3
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	9
TOTAL	30

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on October 25, 2012 for the Second Pre-Election statement, which covers the reporting period ending October 20, 2012. Only one filer still has not filed his required statement. Staff sent a Non-Specific Written Notice. In the interim, staff continues to receive and process campaign statements for other filing deadlines. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations. The next filing deadline is January 31, 2013 for the Second Semi-Annual Statement, which covers the reporting period ending December 31, 2012.

b. Collection of late filing fees and contribution forfeitures. In the FY12-13, as of December 31, the Commission collected a total of \$26,786 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$23,264, of which waiver requests are pending for \$1,885; and \$6,659 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						TOTAL	\$6,659

4. Revenues report.

For FY 12-13, the Commission was budgeted to generate \$100,000 in revenues. As of January 18, 2013, the Commission received \$ 49,387 as summarized below. The figure represents collection of approximately 49 percent of expected revenues for FY 12-13.

Revenues received as of January 18, 2013:

Source	Budgeted Amount FY 12-13	Receipts
Lobbyist Fees	\$27,000	\$18,000
Other Ethics General	\$1,000	\$92
Campaign Finance Fines	\$50,000	\$21,572
Campaign Consultant Fees	\$18,000	\$3,650
Lobbyist Fines	\$1,000	\$550
Statements of Economic Interests Fines	\$1,000	\$2540
Other Ethics Fines	\$1,000	\$1,300
Campaign Consultant Fines	\$1,000	\$150
Unallocated	\$0	\$1,533
Total	\$100,000	\$49,387

5. Lobbyist program.

As of January 15, 2013, 89 individual lobbyists were registered with the Commission. For FY 12-13, as of January 15, 2013, total revenues collected were \$18,550, including \$18,000 in lobbyist registration fees and \$550 in late fines. The filing deadline for the annual re-registration

fee is February 1, 2013 and the filing deadline for the next lobbyist disclosure statement is February 15, 2013.

6. Campaign Consultant program.

As of January 18, 2013, eighteen campaign consultants are registered with the Commission. \$3,650 in registration fees and \$150 in fines have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Friday, March 15, 2013. Staff will send reminders to all active campaign consultants two weeks before the deadline.

7. Outreach and Education.

On November 8, staff met with 16 representatives of the Sichuan Provincial Foreign Affairs Public Administration Management Office. On December 4, staff met with 14 representatives of the Xizang State-owned Assets Supervision and Administration Commission. Both meetings were sponsored by the U.S.-China Exchange Council. The delegations were interested in learning about the work of the Ethics Commission, codes of ethics, and conflicts of interest matters, as well as efforts to support government integrity and prevent corruption.

On December 6, 2012, staff met with 18 representatives of the Jiangsu, China Provincial Supervision Departments and Bureaus. On January 14, 2013, staff met with 17 representatives from several provincial and municipal departments of Sichuan, China. The delegations, sponsored by Triway International, Inc., were in the U.S. to learn about anti-corruption practices in the states and to discuss the functions of the Ethics Commission and its education and enforcement programs.

On December 12, staff met with 25 members of Chinese Justice Management Delegation, representing prison officials and administrators from China. The group, sponsored by the Cross Cultural Exchange, was invited to study anti-corruption practices in the U.S.

On November 28, staff trained the filing officer of the Planning Department and Commission on Statement of Economic Interests filing requirements.

On December 21, staff trained employees of the Department of Children, Youth and their Families on state and local conflict of interest laws.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training

SIA Template Language Training

The Commission has scheduled two trainings for filing officers regarding the annual Statement of Economic Interests filings that are due April 2, 2013. The trainings will be held on February 6 and March 5, 2013 at 10 a.m. in Room 421 City Hall.

8. Budget and Legislative Analyst's Report.

On June 5, 2012, the Budget Analyst issued a report comparing the laws of the City and County of San Francisco and the City of Los Angeles. The report examined four areas of policy and enforcement: campaign financing, enforcement and education, lobbying, and transparency. On December 4 and 10, 2012, staff held interested persons meetings to obtain feedback on the policy options listed by the Budget Analyst. Based on concerns raised, staff will convene another interested persons meeting on February 27, 2013 at 3:00 p.m. in Room 400 City Hall. At the meeting, staff hopes to present proposals for comment prior to their presentation before the Commission, which may occur in March.

9. Technology Upgrades.

In December, 2012, staff deployed a variety of technology upgrades. A new electronic filing software application is now available for committees required to file FPCC campaign finance forms. The new application was developed as part of the Commission's contract with Netfile and it incorporates much of the feedback that the Commission has received regarding the current SFEDS application. The application is available to committees free of charge.

Highlights of the new application include:

- Single Sign-on for treasurers with multiple committees;
- Streamlined data entry and faster data access, particularly for Form 460 Schedules D and G;
- Ability to edit previously entered bills, payments, and loans;
- Advanced transaction filtering;
- Ability to change cover-page information;
- Ability to add document notes to be attached to a statement;
- Page help for every form;
- Ability to add committee officers and assign signatory permissions; and
- Easier statement amendment process.

The Commission also deployed new computers for staff and the public access room as part of the City's PC Refresh Program. In addition, staff migrated the Commission's server to the City's new data center as part of the Committee on Information Technology's Server Consolidation Project.

10. Status of legislative proposals endorsed by Ethics Commission.

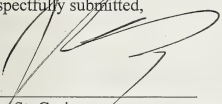
Amendments to Section 1.112 of the Campaign and Governmental Conduct Code approved by the Commission at its meeting on July 23, 2012 passed first reading by the Board of Supervisors on January 15, 2013. The amendments include the following changes:

- Committees that are required to file electronic campaign finance statements will no longer be required to file duplicate paper copies;
- Committees will be required to file electronic statements if the committee receives contributions or makes expenditures that total \$1,000 or more in a calendar year;
- County Central Committee candidate controlled committees and primarily formed committees will be required to file electronically; and
- Any committee not required to file electronic statements may voluntarily opt to file electronic statements.

Should the amendments pass second reading by the Board of Supervisors and be approved by the Mayor, staff will provide notice to committees of these changes and instructions regarding new electronic filing procedures.

The amendments to Section 1.112 were made possible as a result of the staff's work on Assembly Bill 2452 that was approved on July, 13 2012.

Respectfully submitted,



John St. Croix
Executive Director

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DRAFT
Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 28, 2013
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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I. Call to order and roll call.

Chairperson Hur called the meeting to order at 5:34 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamiene Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney (DCA).

OTHERS PRESENT: Jason Cunningham, Budget Analyst; David Pilpel; Patrick Monette-Shaw; Derek Kerr; Ray Hartz; Paula Datesch; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Memorandum from the Executive Director re: Regulations for Investigations and Enforcement Proceedings, dated January 18, 2013
- Draft amendments to the Commission's Enforcement Regulations
- Regulations for Violations of the Sunshine Ordinance
- Memorandum from the Deputy Executive Director re: San Jose City Attorney Report – Complaint Nos. 08-110816 and 09-110816, dated January 23, 2013
- Memorandum from San Jose Deputy City Attorney Lisa Herrick re: Referral from Sunshine Ordinance Task Force re Ethics Complaint 09-110816, dated October 24, 2012
- Memorandum from the Executive Director re: Fiscal Year 2013/2014 Budget Request, dated January 23, 2013
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission of November 26, 2012
- Executive Director's Report for The San Francisco Ethics Commission Meeting of January 28, 2013

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

An unidentified member of the public stated that Library Commission President Jewelle Gomez violated his constitutional rights. He stated that the Ethics Commission determined that Ms. Gomez violated the Sunshine Ordinance. He stated that he requested a document from Supervisor Kim's office and received a version with personal information redacted. He stated that redacting personal information is a violation of the Sunshine Ordinance.

Ray Hartz stated that Ms. Gomez has been elected to be the Library Commission President twice since the Ethics Commission's determination that she violated the Sunshine Ordinance. He stated that Mayor Lee has refused to follow-up on the violation. He stated that the Library Commission is in dereliction of its duty.

Patrick Monette-Shaw stated that Commissioner Renne should recuse himself from considering Mr. Monette-Shaw's matter. He stated that the Ethics Commission should not decide the matter because the Executive Director is the respondent.

Paula Datesh stated that the Arts Commission has violated the Sunshine Ordinance. She stated that she has brought the matter to the Ethics Commission and wants the matter investigated.

III. Discussion and possible action on action on draft amendments to the Commission's Regulations for Investigations and Enforcement Proceedings.

Executive Director St. Croix introduced the item.

Chairperson Hur stated that the item is a housekeeping measure to remove references to the Sunshine Ordinance from the Enforcement Regulations now that there are separate regulations in place for Sunshine Ordinance matters.

Public Comment:

Derek Kerr stated that the requirement to calendar an item was recommended to be one commissioner by the Civil Grand Jury.

Ray Hartz stated that the Ethics Commission has ignored 14 orders of determination by the Sunshine Ordinance Task Force.

David Pilpel stated that the word "handling" should be included in the title of the Enforcement Regulations, and that the word "alleged" should be in the title of the Sunshine Ordinance Regulations.

Patrick Monette-Shaw stated that the word "alleged" should not be included in the title for the Sunshine Ordinance Regulations.

Chairperson Hur stated that the titles of both sets of regulations are not being addressed at this meeting.

Motion 13-1-28-1 (Hayon/Studley) Moved, seconded, and passed (5-0) that the Commission adopt the deletion of references to violations of the Sunshine Ordinance from the Commission's Enforcement Regulations, which are now handled under separate regulations, and to adopt staff's other proposed changes.

IV. Discussion and possible action on a report submitted by Lisa Herrick, formerly of the San Jose City Attorney's Office.

Executive Director St. Croix left the dais during the item.

Commissioner Renne requested to be recused from the item.

Motion 13-1-28-2 (Studley/Hayon) Moved, seconded, and passed (4-0, Renne abstaining) to allow Commissioner Renne to be recused from the matter.

Chairperson Hur introduced the item. He stated that Ms. Herrick determined that three pages of communications could be released as they have been redacted by her.

Public Comment:

Patrick Monette-Shaw stated that California Evidence Code does not apply and that the pages Ms. Herrick identified were presumptively public records.

The following written summary was provided by the speaker, Patrick Montette-Shaw, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

San Francisco's Ethics Commission has denied me access to public records for almost two years.

Sunshine Ordinance Section 67.24(b)(1)(iii), regarding access to Litigation Materials, states: "Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance," are public records subject to disclosure under San Francisco's Sunshine Ordinance." [sic]

Notably, Section 6253(c) of California's Public Records Act gives agencies 10 days to notify requestors whether requested records are exempt or disclosable, and that if an agency fails to notify the requestor in timely fashion, it waives any applicable exemption. [sic]

Now two years after I filed this records request, this Commission is pathetically still debating whether records identified by San Jose Deputy City Attorney Lisa Herrick as probably disclosable involved wrongful, willful withholding by Ethics. [sic]

Derek Kerr stated that he was a whistleblower. He stated that there is too long of a delay in handling complaints. He stated that he is concerned that the Ethics Commission is burying retaliation complaints to enable retaliation.

An unidentified member of the public stated that he supported Mr. Monette-Shaw. He stated that unless a document is specifically exempt, it is a public record.

David Pilpel stated that the three pages identified by Ms. Herrick are public records and should be provided.

DCA Givner stated that the Commission may review in camera documents that are privileged.

Chairperson Hur stated that the emails should be released to Mr. Monette-Shaw as they are redacted and as recommended by Ms. Herrick. He stated that the redacted information relates to communications between the Ethics Commission and the Controller's Office. He stated that the documents Ms. Herrick recommended be released are heavily redacted and staff reasonably withheld the documents given their content.

Motion 13-1-28-3 (Liu/Studley) Moved, seconded, and passed (4-0, Renne abstaining) to release the records as recommended and redacted by Ms. Herrick.

Chairperson Hur stated that the withholding of the records was not a willful violation.

Commissioner Liu stated that she agreed that the withholding of the records was not willful given the amount of debate the Commission had in determining whether to accept Ms. Herrick's recommendation.

Patrick Monette-Shaw Stated that the withholding was willful.

Derek Kerr stated that the Ethics Commission should consider releasing redacted documents even if all of the information contained in the document is confidential. He stated that the information is confidential, but the document is public.

Ray Hartz stated that the finding that a violation is not willful merely because the issue is complicated is circular reasoning.

David Pilpel stated that the public should hear from the Executive Director.

Commissioner Studley stated that she agreed that the violation is not willful.

Executive Director St. Croix stated that the documents as redacted contained no usable information.

DCA Givner stated that the Sunshine Ordinance allows a department to withhold a document if redacting confidential information is so extensive as to render the document unusable.

Motion 13-1-28-4 (Studley/Hayon) Moved, seconded, and passed (4-0, Renne abstaining) that the withholding of records by the Executive Director was not willful.

Chairperson Hur addressed the public stating that he understands the frustration of the public given the confidential nature of Ethics Commission investigations, but that the Commission is bound by the City Charter prohibiting disclosure of investigations.

V. Discussion and possible action on Ethics Commission budget.

Executive Director St. Croix introduced the item.

Jason Cunningham, the Budget Analyst assigned to the Commission, introduced himself to the Commission members.

Responding to Commissioner Hayon, Executive Director St. Croix stated that the Commission should consider proposing the same budget as the Commission was granted for the last fiscal year. He stated that there is a need to engage in more investigations, conduct audits on all committees, and increase campaign consultant reporting. He stated that any cuts to the current budget would come from staffing.

Public Comment:

David Pilpel stated that the memo regarding the budget did not have enough information. He stated that the Commission meetings should not be televised to save money.

Motion 13-1-28-5 (Renne/Hayon) Moved, seconded, and passed (5-0) to approve the submission of the proposed budget without the cuts sought by the Mayor's Office.

VI. Closed Session – Discussion and possible action regarding a complaint received or initiated by the Ethics Commission.

Public Comment:

An unidentified member of the public asked how long the closed session would last.

Motion 13-1-28-6 (Liu/Studley) Moved, seconded, and passed (5-0) to move into closed session.
[The Commission went into closed session at 7:05 p.m.]

Motion 13-1-28-7 (Studley/Hayon) Moved, seconded, and passed (5-0) that pursuant to section C3.699-13, the Ethics Commission will not disclose its closed session deliberations.
[The Commission went into open session at 7:57 p.m.]

Executive Director St. Croix read a Finding of Probable Cause for Ethics Commission Complaint 13-111013:

At its regular meeting of January 28, 2013, in the matter of Ethics Complaint Number 13-111013, the Ethics Commission made a determination that there is probable cause to believe the following violations of the San Francisco Campaign and Governmental Conduct Code occurred; and that the Respondent(s), Cesar Ascarrunz and Bessie Natareno, committed them:

- 1) One violation of San Francisco Campaign and Governmental Conduct Code section 1.116, subsection (a)(2), for reporting and receiving a loan to his candidate committee in excess of \$120,000;
- 2) One violation of San Francisco Campaign and Governmental Conduct Code section 1.116, subsection (c), for repaying a loan amount in excess of \$120,000;
- 3) One violation of California Government Code, section 81004, subdivision (a), as incorporated into local law by San Francisco Campaign and Governmental Conduct Code, section 1.106, for not accurately reporting either the correct amount of a loan that the committee incurred, or the date that the loan was actually deposited into the committee's bank account;
- 4) One violation of San Francisco Campaign and Governmental Conduct Code, section 1.109, subsection (b), for not providing documents that they were required to keep within 10 business days after a request by Ethics Commission staff;
- 5) Fifteen violations of California Government Code, section 84104, as incorporated into local law by San Francisco Campaign and Governmental Conduct Code, section 1.106, for failing to maintain detailed records that document the dates on which his committee made 15 expenditures, the amounts of the expenditures, the names and addresses of the payees, or descriptions of the goods or services;
- 6) Fifteen violations of San Francisco Campaign and Governmental Conduct Code, section 1.108, subdivision (a)(1), for failing to make 15 campaign expenditures from the candidate committee's bank account.

Each Commissioner who participated in a decision to find probable cause must certify on the record that he or she personally heard or read the testimony, reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

[Each Commissioner publicly certified on the record that they participated in a decision to find probable and that he or she personally heard or read the testimony, reviewed the evidence, or otherwise reviewed the entire record of the proceedings.]

The Respondents are presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

The Executive Director shall issue an accusation in accordance with the San Francisco Ethics Commission Regulations for Investigations and Enforcement Proceedings.

VII. Discussion and possible action on minutes of the Commission's regular meeting of November 26, 2012.

Public Comment:

David Pilpel advised Commission staff of several typographical errors.

Motion 13-1-28-8 (Studley/Renne) Moved, seconded, and passed (5-0) that the Commission adopt the minutes of the regular meeting of November 26, 2012, as amended.

VIII. Discussion of Executive Director's Report.

The Executive Director introduced the report and noted several highlights.

Public Comment:

David Pilpel stated that the report should include information on the status of pending audits.

IX. Discussion on items for future meetings.

Vice-Chairperson Studley stated that she appreciated staff's scheduling of the Interested Persons meeting regarding the Budget Analyst's report.

Public Comment:

David Pilpel stated that the Executive Director report should include topics to be considered at future meetings.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

An unidentified member of the public stated that the Mayor's Office is a gang as is the Library Commission and the Ethics Commission. He stated that the Executive Director sees himself as a corporate executive.

XI. Adjournment.

Motion 13-1-28-9 (Liu/Renne) Moved, seconded, and passed (5-0) that the Commission adjourn.

The meeting adjourned at 8:12 p.m.

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 28, 2013
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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I. Call to order and roll call.

Chairperson Hur called the meeting to order at 5:34 PM.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamieenne Studley, Vice-Chairperson; Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney (DCA); Joshua White, DCA.

OTHERS PRESENT: Jason Cunningham, Budget Analyst; David Pilpel; Patrick Monette-Shaw; Derek Kerr; Ray Hartz; Paula Datesch; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Memorandum from the Executive Director re: Regulations for Investigations and Enforcement Proceedings, dated January 18, 2013
- Draft amendments to the Commission's Enforcement Regulations
- Regulations for Violations of the Sunshine Ordinance
- Memorandum from the Deputy Executive Director re: San Jose City Attorney Report – Complaint Nos. 08-110816 and 09-110816, dated January 23, 2013
- Memorandum from San Jose Deputy City Attorney Lisa Herrick re: Referral from Sunshine Ordinance Task Force re Ethics Complaint 09-110816, dated October 24, 2012
- Memorandum from the Executive Director re: Fiscal Year 2013/2014 Budget Request, dated January 23, 2013
- Draft Minutes of the Regular Meeting of the San Francisco Ethics Commission of November 26, 2012
- Executive Director's Report for The San Francisco Ethics Commission Meeting of January 28, 2013

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

An unidentified member of the public stated that Library Commission President Jewelle Gomez violated his constitutional rights. He stated that the Ethics Commission determined that Ms. Gomez violated the Sunshine Ordinance. He stated that he requested a document from Supervisor Kim's office and received a version with personal information redacted. He stated that redacting personal information is a violation of the Sunshine Ordinance.

Ray Hartz stated that Ms. Gomez has been elected to be the Library Commission President twice since the Ethics Commission's determination that she violated the Sunshine Ordinance. He stated that Mayor Lee has refused to follow-up on the violation. He stated that the Library Commission is in dereliction of its duty.



Patrick Monette-Shaw stated that Commissioner Renne should recuse himself from considering Mr. Monette-Shaw's matter. He stated that the Ethics Commission should not decide the matter because the Executive Director is the respondent.

Paula Datesh stated that the Arts Commission has violated the Sunshine Ordinance. She stated that she has brought the matter to the Ethics Commission and wants the matter investigated.

III. Discussion and possible action on action on draft amendments to the Commission's Regulations for Investigations and Enforcement Proceedings.

Executive Director St. Croix introduced the item.

Chairperson Hur stated that the item is a housekeeping measure to remove references to the Sunshine Ordinance from the Enforcement Regulations now that there are separate regulations in place for Sunshine Ordinance matters.

Public Comment:

Derek Kerr stated that the requirement to calendar an item was recommended to be one commissioner by the Civil Grand Jury.

Ray Hartz stated that the Ethics Commission has ignored 14 orders of determination by the Sunshine Ordinance Task Force.

David Pilpel stated that the word "handling" should be included in the title of the Enforcement Regulations, and that the word "alleged" should be in the title of the Sunshine Ordinance Regulations.

Patrick Monette-Shaw stated that the word "alleged" should not be included in the title for the Sunshine Ordinance Regulations.

Chairperson Hur stated that the titles of both sets of regulations are not being addressed at this meeting.

Motion 13-1-28-1 (Hayon/Studley) Moved, seconded, and passed (5-0) that the Commission adopt the deletion of references to violations of the Sunshine Ordinance from the Commission's Enforcement Regulations, which are now handled under separate regulations, and to adopt staff's other proposed changes.

IV. Discussion and possible action on a report submitted by Lisa Herrick, formerly of the San Jose City Attorney's Office.

Executive Director St. Croix left the dais during the item.

Commissioner Renne requested to be recused from the item.

Motion 13-1-28-2 (Studley/Hayon) Moved, seconded, and passed (4-0, Renne abstaining) to allow Commissioner Renne to be recused from the matter.

Chairperson Hur introduced the item. He stated that Ms. Herrick determined that three pages of communications could be released as they have been redacted by her.

Public Comment:



Patrick Monette-Shaw stated that California Evidence Code does not apply and that the pages Ms. Herrick identified were presumptively public records.

The following written summary was provided by the speaker, Patrick Montette-Shaw, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

San Francisco's Ethics Commission has denied me access to public records for almost two years.

Sunshine Ordinance Section 67.24(b)(1)(iii), regarding access to Litigation Materials, states: "Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance," are public records subject to disclosure under San Francisco's Sunshine Ordinance." [sic]

Notably, Section 6253(c) of California's Public Records Act gives agencies 10 days to notify requestors whether requested records are exempt or disclosable, and that if an agency fails to notify the requestor in timely fashion, it waives any applicable exemption. [sic]

Now two years after I filed this records request, this Commission is pathetically still debating whether records identified by San Jose Deputy City Attorney Lisa Herrick as probably disclosable involved wrongful, willful withholding by Ethics. [sic]

Derek Kerr stated that he was a whistleblower. He stated that there is too long of a delay in handling complaints. He stated that he is concerned that the Ethics Commission is burying retaliation complaints to enable retaliation.

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DCA Givner stated that the Commission may review in camera documents that are privileged.

Chairperson Hur stated that the emails should be released to Mr. Monette-Shaw as they are redacted and as recommended by Ms. Herrick. He stated that the redacted information relates to communications between the Ethics Commission and the Controller's Office. He stated that the documents Ms. Herrick recommended be released are heavily redacted and staff reasonably withheld the documents given their content.

Motion 13-1-28-3 (Liu/Studley) Moved, seconded, and passed (4-0, Renne recused) to release the records as recommended and redacted by Ms. Herrick.

Chairperson Hur stated that the withholding of the records was not a willful violation.

Commissioner Liu stated that she agreed that the withholding of the records was not willful given the amount of debate the Commission had in determining whether to accept Ms. Herrick's recommendation.

Patrick Monette-Shaw Stated that the withholding was willful.



Derek Kerr stated that the Ethics Commission should consider releasing redacted documents even if all of the information contained in the document is confidential. He stated that the information is confidential, but the document is public.

Ray Hartz stated that the finding that a violation is not willful merely because the issue is complicated is circular reasoning.

David Pilpel stated that the public should hear from the Executive Director.

Commissioner Studley stated that she agreed that the violation is not willful.

Executive Director St. Croix stated that the documents as redacted contained no usable information.

DCA Givner stated that the Sunshine Ordinance allows a department to withhold a document if redacting confidential information is so extensive as to render the document unusable.

Motion 13-1-28-4 (Studley/Hayon) Moved, seconded, and passed (4-0, Renne recused) that the withholding of records by the Executive Director was not willful.

Chairperson Hur addressed the public stating that he understands the frustration of the public given the confidential nature of Ethics Commission investigations, but that the Commission is bound by the City Charter prohibiting disclosure of investigations.

V. Discussion and possible action on Ethics Commission budget.

Executive Director St. Croix introduced the item.

Jason Cunningham, the Budget Analyst assigned to the Commission, introduced himself to the Commission members.

Responding to Commissioner Hayon, Executive Director St. Croix stated that the Commission should consider proposing the same budget as the Commission was granted for the last fiscal year. He stated that there is a need to engage in more investigations, conduct audits on all committees, and increase campaign consultant reporting. He stated that any cuts to the current budget would come from staffing.

Public Comment:

David Pilpel stated that the memo regarding the budget did not have enough information. He stated that the Commission meetings should not be televised to save money.

Motion 13-1-28-5 (Renne/Hayon) Moved, seconded, and passed (5-0) to approve the submission of the proposed budget without the cuts sought by the Mayor's Office.

VI. Closed Session – Discussion and possible action regarding a complaint received or initiated by the Ethics Commission.

Public Comment:

An unidentified member of the public asked how long the closed session would last.

Motion 13-1-28-6 (Liu/Studley) Moved, seconded, and passed (5-0) to move into closed session.



[The Commission went into closed session at 7:05 p.m. In attendance in closed session were all five members of the Ethics Commission, Executive Director St. Croix, Deputy Executive Director Ng, DCA Givner, DCA White, Investigator Chatfield, and Respondent.]

Motion 13-1-28-7 (Studley/Hayon) Moved, seconded, and passed (5-0) that pursuant to section C3.699-13, the Ethics Commission will not disclose its closed session deliberations.

[The Commission went into open session at 7:57 p.m.]

Executive Director St. Croix read a Finding of Probable Cause for Ethics Commission Complaint 13-111013:

At its regular meeting of January 28, 2013, in the matter of Ethics Complaint Number 13-111013, the Ethics Commission made a determination that there is probable cause to believe the following violations of the San Francisco Campaign and Governmental Conduct Code occurred; and that the Respondent(s), Cesar Ascarrunz and Bessie Natareno, committed them:

- 1) One violation of San Francisco Campaign and Governmental Conduct Code section 1.116, subsection (a)(2), for reporting and receiving a loan to his candidate committee in excess of \$120,000;
- 2) One violation of San Francisco Campaign and Governmental Conduct Code section 1.116, subsection (c), for repaying a loan amount in excess of \$120,000;
- 3) One violation of California Government Code, section 81004, subdivision (a), as incorporated into local law by San Francisco Campaign and Governmental Conduct Code, section 1.106, for not accurately reporting either the correct amount of a loan that the committee incurred, or the date that the loan was actually deposited into the committee's bank account;
- 4) One violation of San Francisco Campaign and Governmental Conduct Code, section 1.109, subsection (b), for not providing documents that they were required to keep within 10 business days after a request by Ethics Commission staff;
- 5) Fifteen violations of California Government Code, section 84104, as incorporated into local law by San Francisco Campaign and Governmental Conduct Code, section 1.106, for failing to maintain detailed records that document the dates on which his committee made 15 expenditures, the amounts of the expenditures, the names and addresses of the payees, or descriptions of the goods or services;
- 6) Fifteen violations of San Francisco Campaign and Governmental Conduct Code, section 1.108, subdivision (a)(1), for failing to make 15 campaign expenditures from the candidate committee's bank account.

Each Commissioner who participated in a decision to find probable cause must certify on the record that he or she personally heard or read the testimony, reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

[Each Commissioner publicly certified on the record that they participated in a decision to find probable and that he or she personally heard or read the testimony, reviewed the evidence, or otherwise reviewed the entire record of the proceedings.]

The Respondents are presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

The Executive Director shall issue an accusation in accordance with the San Francisco Ethics Commission Regulations for Investigations and Enforcement Proceedings.

VII. Discussion and possible action on minutes of the Commission's regular meeting of November 26, 2012.

Public Comment:

David Pilpel advised Commission staff of several typographical errors.

Motion 13-1-28-8 (Studley/Renne) Moved, seconded, and passed (5-0) that the Commission adopt the minutes of the regular meeting of November 26, 2012, as amended.

VIII. Discussion of Executive Director's Report.

The Executive Director introduced the report and noted several highlights.

Public Comment:

David Pilpel stated that the report should include information on the status of pending audits.

IX. Discussion on items for future meetings.

Vice-Chairperson Studley stated that she appreciated staff's scheduling of the Interested Persons meeting regarding the Budget Analyst's report.

Public Comment:

David Pilpel stated that the Executive Director report should include topics to be considered at future meetings.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

An unidentified member of the public stated that the Mayor's Office is a gang as is the Library Commission and the Ethics Commission. He stated that the Executive Director sees himself as a corporate executive.

XI. Adjournment.

Motion 13-1-28-9 (Liu/Renne) Moved, seconded, and passed (5-0) that the Commission adjourn.

The meeting adjourned at 8:12 p.m.





**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

February 25, 2013 5:30 P.M.

and AGENDA

Room 400 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Discussion and possible action on matters submitted under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance. Under Chapter Three, the Executive Director has prepared a written report and recommendation summarizing his factual and legal findings on each of the following matters. Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. (Attachments: for each matter listed, notice letters from the Commission staff to Complainant and Respondent(s), staff report with recommendation and attachments, and any documents submitted to the Commission by the respective Complainant and/or Respondent(s); a copy of the Ethics Commission Regulations for Violations of the Sunshine Ordinance and a copy of the Sunshine Ordinance, Chapter 67 of San Francisco Administrative Code.)
- a) Ethics Complaint No. 03-120402 regarding alleged willful violation of Sunshine Ordinance by department head (referred from the Sunshine Ordinance Task Force on April 2, 2012)
Complainant: Ray Hartz
Respondent: Luis Herrera, City Librarian, San Francisco Public Library
- b) Ethics Complaint No. 15-111205 regarding alleged willful violation of the Sunshine Ordinance by a department head (referred from the Sunshine Ordinance Task Force on December 5, 2011)
Complainant: George Wooding

Respondent: Phil Ginsburg, General Manager, San Francisco Recreation and Parks Department

IV. Discussion and possible action on matters submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance. Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden of showing that the Task Force erred in its determination. In each of the following show cause hearings, the votes of at least three Commissioners are required to make a finding that Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a five-minute rebuttal. (Attachments: for each matter listed, copies of all documents received from the Sunshine Ordinance Task Force, notice letters from the Commission staff to the Respondent(s) and Complainant, and any documents submitted to the Commission by the respective Respondent(s) and/or Complainant; a copy of the Ethics Commission Regulations for Violations of the Sunshine Ordinance and a copy of the Sunshine Ordinance, Chapter 67 of San Francisco Administrative Code.)

- a) Ethics Complaint No. 15-111205 (referred from the Sunshine Ordinance Task Force on December 5, 2011)
Complainant: George Wooding
Respondents: Sarah Ballard, Mark Buell, and Olive Gong, San Francisco Recreation and Parks Department
- b) Ethics Complaint No. 04-120507 (referred from the Sunshine Ordinance Task Force on April 30, 2012)
Complainant: Cynthia Carter
Respondent: Caroline Celaya, San Francisco Municipal Transportation Authority
- c) Ethics Complaint No. 07-120621 (referred from the Sunshine Ordinance Task Force on June 20, 2012)
Complainant: Lars Nyman
Respondents: Frank Lee and Mohammed Nuru, San Francisco Department of Public Works
- d) Ethics Complaint No. 09-120703 (referred from the Sunshine Ordinance Task Force on July 3, 2012)
Complainant: William Clark
Respondent: Howard Lazar, Street Artists Program Director for the San Francisco Arts Commission

V. Discussion and possible action on election of Chair and Vice-chair. The Commission will elect a Chair and Vice-chair to serve for the coming year.

- VI. Discussion and possible action on the minutes of the Commission's regular meeting of January 28, 2013. (Attachment: January 28, 2013 draft minutes.)
- VII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)
- VIII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- X. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours. Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: www.sfgov.org/ethics.

S:\AGENDA\2013\2.25.13.doc



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

Date: February 1, 2013

JAMENNE S. STUDLEY
VICE-CHAIRPERSON

To: Luis Herrera, Respondent
Ray Hartz, Complainant

BEVERLY HAYON
COMMISSIONER

From: John St. Croix, Executive Director

DOROTHY S. LIU
COMMISSIONER

Re: **NOTICE – Hearing – Ethics Complaint 03-120402**

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Enclosed is the Report and Recommendation for the above complaint. Luis Herrera is the named Respondent. Ray Hartz is the named Complainant.

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter will be heard under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"). Staff has scheduled this matter to be heard during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013**, in Room 400 in City Hall.

Neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

Under Chapter Three of the Regulations, the Executive Director shall prepare a written Report and Recommendation summarizing his or her factual and legal findings. Each Complainant and Respondent may submit a written response to the Director's Report and Recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing, or no later than Friday, February 15, 2013. The Complainant or Respondent must deliver eight copies of the response to the Executive Director

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this notice, as well as a copy of the Regulations.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIEENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: February 1, 2013

To: Members, Ethics Commission

Cc: Luis Herrera, San Francisco City Librarian
Ray Hartz
Members, Sunshine Ordinance Task Force

From: John St. Croix, Executive Director

Re: **REPORT AND RECOMMENDATION**
ETHICS COMMISSION COMPLAINT NO. 03-120402

INTRODUCTION AND JURISDICTION

On April 2, 2012, the Ethics Commission ("Commission") received a referral from the Sunshine Ordinance Task Force ("Task Force") for the Task Force complaint number 11054. The written referral stated: "The [Task Force] hereby provides notification of willful failure and official misconduct findings against San Francisco City Librarian Luis Herrera ("Respondent") for failure to comply with the Order of Determination issued September 3, 2011." Specifically, Mr. Herrera was found to have violated San Francisco Administrative Code ("Sunshine Ordinance" or "Ordinance"), section 67.16, for "willful failure to include the 150-word summary in the body of the minutes after a previous Order of Determination specifically instructed the Library Commission to include such statement in the body of the minutes." The referral was

made pursuant to Ordinance, section 67.34, for the willful failure of the named Respondent to comply with provisions of the Ordinance.

Sunshine Ordinance section 67.34 provides that complaints involving allegations of willful violations of the Ordinance shall be handled by the Commission. Complaints alleging a willful violation of the Ordinance by elected officials or department heads are handled pursuant to the Commission's Regulations for Violations of the Sunshine Ordinance ("Regulations"), Chapter Three. Under Chapter Three, the Executive Director must prepare a written report and recommendation summarizing his or her factual and legal findings, applicable legal provisions, and evidence gathered. The report and recommendation must also recommend whether or not a Respondent willfully violated the Ordinance, non-willfully violated the Ordinance, or did not violate the Ordinance. The Commission is not bound by the Executive Director's recommendation.

SUMMARY OF FACTUAL FINDINGS

On July 26, 2011, Ray Hartz filed a complaint with the Task Force. The complaint alleged that on July 21, 2011, the Library Commission approved minutes for its Regular Meetings held on May 19, 2011, and June 16, 2011. Mr. Hartz alleged that in both sets of minutes, various 150-word summaries submitted by Mr. Hartz and other members of the public were not included in the body of the minutes. Mr. Hartz alleged that the Task Force had already determined that any 150-word statement submitted to a City policy body must be included in the minutes. Mr. Hartz stated that City Librarian Herrera was ultimately responsible for ensuring that Library Department staff complies with the Task Force ruling.

On August 23, 2011, the Task Force held a hearing on the complaint. At that hearing, representatives for the Library stated that the 150-word summaries were included in the minutes

as addenda. The Library representative asserted that the Library Commission followed the advice of the City Attorney's Office which counsels that 150-word summaries may be attached as an addendum to meeting minutes. The Task Force determined that an addendum is not part of the minutes; therefore, any 150-word summary that appears in an addendum is not in the body of the minutes as required by the Ordinance.

On September 13, 2011, the Task Force's Compliance and Amendments Committee determined that the Library failed to comply with the order. The Task Force issued a written referral on March 13, 2012, which the Commission received on April 2, 2012.

SUMMARY OF APPLICABLE LAW

Section 67.16 provides, in relevant part, that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes."

Section 67.34 states that "[t]he willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission."

SUMMARY OF EVIDENCE GATHERED

Staff reviewed the audio recording of the Task Force hearing on the matter, and the documents forwarded from the Task Force (Appendix A). After reviewing the recordings and documents, staff determined that no interviews were necessary. All documents that staff reviewed are attached to this report.

LEGAL FINDINGS

There was no violation of section 67.16 because the Library Commission included Mr. Hartz's statement as required by the Sunshine Ordinance.

Section 67.16 of the Sunshine Ordinance requires boards and commissions to record minutes for each regular and special meeting. It also states that “[a]ny written summary provided by a speaker of no more than 150 words be included in the minutes.” The Office of the City Attorney has published an overview of the laws governing the conduct of public officials in its Good Government Guide. In this guide, the Office of the City Attorney has advised policy bodies that, because the written statement is not part of the official minutes adopted by the body, the statement may be included as an attachment to the minutes. (See SF Good Govt. Guide, Part 3, § IV(G)(2)(b), p. 133 – 134.)

In the minutes for the Library Commission meeting of May 19, 2011, the Library Commission included four 150-word summaries. Mr. Hartz’s statement was included in those four. The four summaries were included in an addendum and were identified as to which agenda item each summary was commenting upon. In the minutes for the Library Commission meeting of June 16, 2011, the Library Commission included seven 150-word summaries. Mr. Hartz’s two statements were included in the seven. The seven summaries were included in an addendum and were identified as to which agenda item each summary was commenting upon.

The Library Commission followed the advice of the City Attorney that is given to all City departments in the Good Government Guide. The addenda for both minutes were not separate attachments, but followed the agenda items in the same document. Further, the Ordinance is silent as to where in a policy body’s minutes any 150-word summary should be placed. Because

the 150-word statements were included in the minutes as advised by the City Attorney's office, staff finds that there is no violation of section 67.16.¹

RECOMMENDATION

Based on the above reasons staff recommends that the Commission find that City Librarian Luis Herrera did not violate the Sunshine Ordinance as to all allegations.

¹ The Commission received a prior referral from the Task Force on August 15, 2011, alleging, among other things, the same violation by the Library Commission for a different set of minutes (Complaint no. 06-110816). That matter was concluded under the Commission's prior set of regulations. In that matter, the Commission dismissed the section 67.16 allegation for the same reasons as outlined in this report and recommendation.

FILED

2012 APR -2 PM 2:02
SUNSHINE ORDINANCE
SAN FRANCISCO
ETHICS COMMISSION



City Hall

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco 94102-4689

Tel. No. (415) 554-7724

Fax No. (415) 554-7854

TDD/TTY No. (415) 554-5227

BY _____

March 13, 2012

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Notice of Willful Failure and Referral for Enforcement of Order of Determination
Sunshine Complaint No. 11054, Ray Hartz v. Luis Herrera of the Public Library**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against San Francisco City Librarian Luis Herrera for failure to comply with the Order of Determination issued September 3, 2011 in Sunshine Complaint No. 11054, *Ray Hartz v. Luis Herrera of the Public Library*, in violation of Sunshine Ordinance public meeting provisions (see S.F. Admin. Code Sec. 67).

This willful failure and official misconduct finding is noticed for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct;"
- (2) San Francisco City Charter Section 15.102 which provides that the Ethics Commission "may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records;"
- (3) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (4) Sunshine Ordinance Section 67.30(c) which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

The Task Force further refers the Order for enforcement, and requests Mr. Herrera be required to include the written summaries of 150 words or less submitted by complainant Ray Hartz in the body

of Library Commission minutes. This enforcement referral is made pursuant to Sunshine Ordinance Section 67.30(c) as previously cited.

Background

Ray Hartz filed a complaint with the Task Force on July 26, 2011 alleging City Librarian Luis Herrera violated public meeting laws by failing to include Mr. Hartz's public comment summaries within the body of the minutes for Library Commission meeting held on May 19, 2011 and June 16, 2011.

Task Force Hearing on Complaint

On August 23, 2011, the Task Force held a hearing on the complaint, finding violations of public meeting laws. On September 13, 2011, the Task Force's Compliance and Amendments Committee found that Mr. Herrera had failed to comply with the Order of Determination.

A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination.

Thank you for your attention to this matter. Please confirm receipt of this notice to the Task Force Administrator at sotf@sfgov.org or (415) 554-7724. The Administrator is also available to provide any additional information needed.

Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: Ray Hartz, Complainant
City Librarian Luis Herrera, Respondent
Library Commission Vice President Lee Munson, Respondent
Library Commission Secretary Sue Blackman, Respondent
Jerry Threet, Deputy City Attorney
Supervisor David Campos, Immediate Past Chair, Government Audit & Oversight Committee
San Francisco Civil Grand Jury

SUNSHINE ORDINANCE
TASK FORCE
2012 APR -2 PM 2:02
SAN FRANCISCO
ETHICS COMMISSION



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

BY _____

September 3, 2011

DATE THE DECISION ISSUED
August 23, 2011

RAY HARTZ v LUIS HERRERA OF THE PUBLIC LIBRARY (CASE NO. 11054)

FACTS OF THE CASE

Complainant Ray Hartz alleges that the San Francisco Public Library (the "Library") and City Librarian Luis Herrera violated Section 67.16 of the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words submitted by himself and other members of the public summarizing their public testimony. Mr. Hartz complains specifically about the minutes of the May 19, 2011 and June 16, 2011 general meetings of the Library Commission. Mr. Hartz further alleges that this violation occurred at the July 21, 2011 meeting of the Commission when it approved the minutes at issue in this complaint. Mr. Hartz further alleges that the violation is that of the Library and Mr. Herrera because the Library employs Commission Secretary Sue Blackman and Mr. Herrera supervises her work. Mr. Hartz further alleges that the above violation occurred after the Task Force referred Sunshine Ordinance Complaint 10054, a previous identical violation, to the Ethics Commission.

COMPLAINT FILED

On July 26, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

HEARING ON THE COMPLAINT

On August 23, 2011, Mr. Hartz presented his case to the Task Force. Library Commission Vice President Lee Munson and Secretary Sue Blackman represented the Library and City Librarian Luis Herrera.

Mr. Hartz testified that Mr. Herrera is Ms. Blackman's immediate supervisor and it is his obligation to ensure she performs her duties according to the law, which includes complying with decisions made by the Task Force. Ms. Blackman, he said, presented two sets of minutes for approval to the Library Commission, knowing that his 150-word statements were included as addenda and not within the body of the minutes as the Task Force had ruled in an earlier case.

He said although he reminded the Library Commission of the Task Force's decision, it nevertheless approved the minutes as presented. The Task Force, he said, specifically ordered Ms. Blackman to place the 150-word statement in the body of the minutes. Yet, he said, she was instructed by her superior not to follow the law. He also reminded the Task Force that it had voted 8-0 to put the 150-word statement in the body of the minutes and that the City Attorney was to be informed of its decision.

Ms. Blackman testified she and Mr. Herrera are at-will employees who report directly to the Library Commission. Mr. Herrera, she said, is her day-to-day supervisor but the policy regarding minutes is set by the Library Commission and Mr. Herrera does not have a role in it. She said the issue has already been addressed by the Task Force in a previous complaint and that the matter was with the Ethics Commission pending a final outcome. She said she was following the advice of the City Attorney's Office which is that the 150-word statement can be added as an addendum to the minutes. Mr. Munson said the Sunshine Ordinance does not indicate specifically where the placement should be. All it says is that the 150-word statement be included in the minutes, he said. He said the critical statements repeated verbatim by certain members of the public on each agenda item prevent an orderly flow to the minutes which then fail to reflect the events of the meeting. Ms. Blackman further stated that the Library Commission would be considering whether to add language to their minutes that clearly stated that the addendum was a part of the minutes, in order to remove any potential confusion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After duly considering the testimony and other evidence presented, along with its prior rulings on the issue, the Task Force found that an addendum is an attachment to a document, not part of the document, and, accordingly, an addendum is not "in the minutes" as required under the Ordinance. The Task Force found that the Ordinance states in simple, plain language that the 150-word statement must be "in the minutes" and that requirement is not satisfied by attaching the statement as an addendum at the end of the minutes. The Task Force further noted that the statements should be within the body of the minutes to prevent public officials from unlawfully abridging unwanted or critical public comment.

DECISION AND ORDER OF DETERMINATION

The Task Force finds Luis Herrera of the Public Library in willful violation of Sunshine Ordinance Section 67.16 pursuant to Section 67.34 for willful failure to include the 150-word summary in the body of the minutes after a previous Order of Determination specifically instructed the Library Commission to include such statements in the body of the minutes.

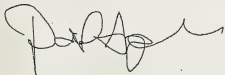
Mr. Herrera and the Library Commission shall make the changes necessary to include the summaries within the body of the minutes to comply with this Order of Determination and are instructed to appear before the Compliance and Amendments Committee on Tuesday, September 13, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 23, 2011, by the following vote: (Costa/Johnson)

Ayes: Snyder, Knee, Washburn, Costa, West, Johnson
Excused: Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

- c: Ray Hartz, Complainant
City Librarian Luis Herrera, Respondent
Library Commission Vice-President Lee Munson, Respondent
Commission Secretary Sue Blackman, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

Appendix A

Date: August 23, 2011

Item No. 12 & 13

File No. 11054

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: August 19, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: August 17, 2011
RE: *Complaint No. 11054: Ray Hartz v. Library, et al.*

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz alleges that the San Francisco Public Library (the "Library"), as well as City Librarian Luis Herrera, violated the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words supplied by members of the public during public testimony, with regard to the minutes of the May 19, 2011 and June 16, 2011 general meetings of the Library Commission. Mr. Hartz further alleges that this violation occurred at the July 21, 2011 meeting of the Commission when it approved the above minutes. Mr. Hartz further alleges that the violation is that of the Library and Herrera, as the Library employs the Commission Secretary and Mr. Herrera supervises here. Mr. Hartz's complaint identifies Administrative Code Section 67.16 as having been violated. Mr. Hartz further alleges that the above violation occurred after the Task Force had referred a previous identical violation, in complaint 10054, to the Ethics Commission.

COMPLAINANT FILES COMPLAINT:

On July 26, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

JURISDICTION

The Library has not contested jurisdiction to hear the complaint.

APPLICABLE STATUTORY SECTION(S):

Sunshine Ordinance (S.F. Administrative Code Section 67.1, et seq.)

- Section 67.16 governs the inclusion in the minutes of an 150-word statement of a member of the public summarizing their public comment made during a meeting.

APPLICABLE CASE LAW:

None.

Memorandum

DATE: August 17, 2011
PAGE: 2
RE: *Complaint No. 11054: Ray Hartz v. Library, et al.*

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Mr. Hartz alleges that Commission Secretary Sue Blackman created drafts minutes of the May 19, 2011 and June 16, 2011 general meetings of the Library Commission, which were presented to the Commission during their July 21, 2011 meeting. Hartz further alleges that these draft minutes did not include in the body of the minutes several written statements of not more than 150 words that had been supplied by members of the public summarizing their public testimony during the May 19, 2011 and June 16, 2011 general meetings. Hartz further alleges that, instead of including these 150-word statements in the body of the meeting minutes, the draft minutes included them in an addendum at the end of the minutes, with a short reference in the body of the minutes that directed the reader to the addendum for the commenter's full statement. Mr. Hartz further alleges that this violation occurred at the time that the Commission approved the above minutes on July 21, 2011. Mr. Hartz further alleges that the violation is that of the Library and Herrera, rather than that of Ms. Blackman, because the Library employs the Commission Secretary and Mr. Herrera supervises her. Mr. Hartz's complaint identifies Administrative Code Section 67.16 as having been violated. Mr. Hartz further alleges that the above violation occurred after the Task Force had referred a previous identical violation, in complaint 10054, to the Ethics Commission.

The Library and Herrera, through Ms. Blackman, do not contest the above facts, but do contest whether their actions constitute a violation of the Ordinance. According to the Library, the Ordinance requires only that the 150 word statement summarizing public comment be included in the minutes; it does not require that the summary be in the body of the minutes in the same location as the public comment which the statement summarizes. The Library further alleges that it has determined that the manner in which it includes the summary statements in its minutes comply with the ordinance and that the City Attorney has so advised them.

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Does the requirement of Section 67.16 that the Commission include a 150 word summary of testimony in its minutes, further require the Commission to include that summary in the body of the minutes specifically under that agenda item?
- Does including the 150 word summary as an addendum to the meeting minutes, with a reference in the body of the minutes, violate Section 67.16?
- Does the action of the Ms. Blackman in doing so, knowing that the Task Force has previously ruled that summary must be included in the body of the minutes, constitute willful failure under Section 67.34?
- Does Mr. Herrera's failure to instruct Ms. Blackman to follow the instructions of the previous order of the Task Force in creating the minutes in question constitute "willful failure"?

Memorandum

DATE: August 17, 2011

PAGE: 3

RE: *Complaint No. 11054: Ray Hartz v. Library, et al.*

SUGGESTED ANALYSIS

Under Section 67.16 of the Ordinance:

- Determine whether Ms. Blackman's summarizing of complainant's testimony in the body of the meeting minutes, and the inclusion of his statement as an addendum to those same minutes with a reference to the summary in the body of the minutes, violated the requirements of Section 67.16.

Under Section 67.34 of the Ordinance:

- Determine whether this failure is a "willful failure" under Section 67.34.
- Determine whether this failure can be attributed to Mr. Herrera, and/or whether his failure to instruct Ms. Blackman to follow the previous order of the Task Force is a "willful failure" under Section 67.34.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE**.

Memorandum

DATE: August 17, 2011
PAGE: 4
RE: *Complaint No. 11054: Ray Hartz v. Library, et al.*

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

SEC. 67.16. MINUTES.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, *a brief summary of each person's statement during the public comment period for each agenda item*, and the time the meeting was adjourned. Any person speaking during a public comment period may supply *a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.*

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

Memorandum

DATE: August 17, 2011

PAGE: 3

RE: *Complaint No. 11054: Ray Hartz v. Library, et al.*

SUGGESTED ANALYSIS

Under Section 67.16 of the Ordinance:

- Determine whether Ms. Blackman's summarizing of complainant's testimony in the body of the meeting minutes, and the inclusion of his statement as an addendum to those same minutes with a reference to the summary in the body of the minutes, violated the requirements of Section 67.16.

Under Section 67.34 of the Ordinance:

- Determine whether this failure is a "willful failure" under Section 67.34.
- Determine whether this failure can be attributed to Mr. Herrera, and/or whether his failure to instruct Ms. Blackman to follow the previous order of the Task Force is a "willful failure" under Section 67.34.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

Memorandum

DATE: August 17, 2011
PAGE: 4
RE: *Complaint No. 11054: Ray Hartz v. Library, et al.*

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The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, *a brief summary of each person's statement during the public comment period for each agenda item*, and the time the meeting was adjourned. Any person speaking during a public comment period may supply *a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.*

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.



SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO PUBLIC LIBRARY

Name of individual contacted at Department or Commission LUIS HERRERA, CITY LIBRARY

☐ Alleged violation public records access
☒ Alleged violation of public meeting. Date of meeting JULY 21, 2011

Sunshine Ordinance Section SECTION 67.16 MINUTES
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

PLEASE SEE ATTACHED

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no
Do you also want a pre-hearing conference before the Complaint Committee? ☐ yes ☒ no

(Optional)
Name RAY W HARTZ JR Address 839 LEAVENWORTH ST, #304
SAN FRANCISCO CA 94109

Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SBCGLOBAL.NET

Date 7/26/11

Ray W Hartz Jr
Signature

I request confidentiality of my personal information. ☐ yes ☒ no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

07/31/08

Tuesday, July 26, 2011

At a meeting of the San Francisco Public Library Commission on July 21, 2011 the commission approved minutes for the regular meeting of May 19, 2011 and the regular meeting of June 16, 2011 (copies attached). Both documents were prepared by Ms. Sue Blackman, the Library Commission secretary. In both sets of minutes, 150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determination issued by the Sunshine Ordinance Task Force (Determination #10054 Ray Hartz vs Library Commission). That case has already been referred to the Ethics Commission for willful failure to comply. The two sets of meeting minutes approved at the July 21, 2011 meeting are two additional violations of the ordinance. Ms. Blackman is a city employee under the direct supervision of Luis Herrera, City Librarian. As her supervisor, Mr. Herrera is responsible for ensuring that Ms. Blackman performs her duties in accordance with applicable law. Mr. Herrera has either directed Ms. Blackman to ignore the task force ruling or has failed to ensure that she complies with that ruling in her preparation of the minutes submitted for approval. As a managerial employee, it is the responsibility of Mr. Herrera to ensure that all employees of the San Francisco Public Library comply with applicable laws, in this instance, the Sunshine Ordinance.



San Francisco Public Library Commission

100 Larkin Street, San Francisco, CA 94102-4733

Phone 415.557.4233, Fax 415.557.4240

DRAFT

SAN FRANCISCO PUBLIC LIBRARY COMMISSION

Minutes of the Regular Meeting of May 19, 2011

Edwin M. Lee
Mayor

Jewelle Gomez
President
A. Lee Munson
Vice-President

Michael C. Breyer
Larry Kane
Michael Nguyen
Teresa Ono
Lorna Randlett
Commissioners

Luis Herrera
City Librarian

Sue Blackman
Commission Secretary

The San Francisco Public Library Commission held a regular meeting on Thursday, May 19, 2011, in the Koret Auditorium, Main Library.

The meeting was called to order at 4:38 pm.

Commissioners present: Breyer, Gomez, Munson, Ono and Randlett.

Commissioners excused: Kane, and Nguyen.

Jill Bourne, Deputy City Librarian, said that Luis Herrera, City Librarian, is not present because he flew to Santa Monica to appear before the State Historical Resources Commission to oppose the nomination of the North Beach Branch Library to the National Register of Historic Places.

AGENDA ITEM NO. 1 PUBLIC COMMENT

An anonymous citizen said this is the meeting you will approve the Minutes of April 7. He said the history of the human mind is an attempt to be free from the tyranny of injustice. He said the idea of a public library is that knowledge should not be limited to wealth and power. He said the President of the Commission makes a big display of not listening, and then accuses the public of not listening. He said this is a cheap trick to enforce the barriers of exclusion, called the "Veranda Factor." (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Executive Director, Library Users Association, said he appreciates the explanation of why the City Librarian is not at the meeting but he is disappointed in the fact that he will be opposing the nomination of the Historic designation for the North Beach Branch. He said the San Francisco Weekly says the best place to get drunk is at the San Francisco Public Library at the Friends' Imbibe event. He said you are not able to save a word document on a library computer.

Ray Hartz, Director San Francisco Open Government, said that he would like the following statement to be entered into the Minutes. "Sunshine



Ordinance of 1999, Section 67.16 Minutes. Any person speaking during the public comment period may supply a brief written summary of their comments, which shall, if not more than 150 words, be included in the minutes." He said there are serious deficiencies in the way the Commission goes about its business. He said the primary purpose of the Commission is to oversee the operations of the Library and other bodies such as Friends to ensure that the operations benefit the library with maximum effect. He said the Commission should become a body focused on its fiduciary responsibility to oversee matters within its area of oversight. He said this Commission provides little real oversight, acting as a rubber stamp for recommendations placed before it and this is far distant from what most members of the public would expect. He said the Commission does not talk about the money in the BLIP program or how much the Friends take in and how much they contribute to the Library. He said it is rude to the public when the Commissioners do not look the speaker in the eye. (See Addendum for a summary of this comment submitted by the speaker.)

Mindy Linetzky, Public Affairs, Department of Public Works (DPW), said as part of DPW work week they opened up the Visitacion Valley branch for a tour while the branch is still in construction. She said the feedback was fantastic and she wanted to thank the Commission for its partnership with DPW.

AGENDA ITEM NO. 2. BOND PROGRAM MANAGER'S REPORT

Lena Chen, Bond Program Manager, said this month there will be a special report on the State of California Department of Finance Reports on the Ingleside Branch Library Grant Audit and the Richmond Branch Library Expansion and Renovation Audit.

Jill Bourne, Deputy City Librarian, said the State of California has completed its audit of the Ingleside Branch Library Grant and the Richmond Branch Library Expansion and Renovation Grant under the Proposition 14 Bond Program. She said both projects have been successfully completed. She said the audit findings determined that the projects met all their fiscal requirements and that there were no observations or questioned costs identified.

Lena Chen, Bond Program Manager, said the approved budget is \$188,910,119. She said there are copies of the budget report and the Quarterly Report in the back of the room. She said the Bayview Branch is in the pre-construction stage and the North Beach Branch is in the EIR/Design Development phase. She said four branches are in construction. She said 18 branches are complete and open. She showed photographs and gave reports on projects in construction including: the Anza Branch scheduled to reopen on June 18; Visitacion Valley; Ortega; and Golden Gate Valley. She said the Planning Commission has certified the Environmental Impact Report (EIR) for the North Beach Branch Library.

Jill Bourne, Deputy City Librarian, said in addition to the Planning Commission approving the EIR, we had the joint Library Commission/Recreation and Park Commission meeting on April 25 where each unanimously approved the North Beach Branch project. She said later that day the Land Use Committee of the Board of Supervisors forwarded a Street Vacation to the full Board with a recommendation to approve. She said the EIR has been appealed and we expect the appeal to be heard at the Board of Supervisors in June. She said on May 2 the Land Use Committee held a separate hearing on the historic designation process and how it affects other city priorities mainly, libraries, parks, transit and affordable housing. She said the City Librarian was asked to testify about the experience of the library in the past year and the impacts of the historic preservation processes on our projects. She said the North Beach Library was nominated to be listed on the national register. She said the Historic Preservation Commission discussed this issue and was not able to reach consensus and forwarded a resolution reflecting the lack of consensus to the California State Historic Preservation Commission. She said unfortunately the State HPC did vote to forward that nomination so we will continue to track that and report back when we get more information. She said to clarify the State Commission's role; this is not a landmark issue since the Board of Supervisors has already voted that it will not be landmarked.

Lena Chen, Bond Program Manager, gave a summary of public outreach activities. She said the Mission Bay and Richmond Branches received an Honorable Mention as a new Landmark Library by the Library Journal. She showed slides of the reopening of the Merced Branch Library. She said she looks forward to seeing everyone at the reopening of the Anza Branch on Saturday, June 18.

Public Comment

An anonymous citizen said he regrets that he missed the tour of Visitation Valley. He said regarding the nomination of the North Beach Branch on the National Registry, the City Librarian testified at a hearing before the Board of Supervisors that he found it a waste of time and resources to oppose concerns about historical preservation. He said this undermines his credibility on the historical preservation issue. He said maybe some concern at the national level will wake us up to the historical value of the building. He said he attending the Merced Branch opening. (See addendum for a 150 word statement submitted by the speaker.)

Peter Warfield, Library Users Association, said he attended the Merced Branch opening. He said he is disappointed the agenda today does not specifically mention the Merced Branch opening. He said the Quarterly Report is referenced by the Bond Manager's Report. He said this particular item is never listed as an explanatory document on the agenda. He said there are very big questions regarding the budget. He said the North Beach Branch has been praised by many as being landmark worthy.

Ray Hartz, Director San Francisco Open Government, said he got a package and the Quarterly Report was not in there and the Bond Manager's Report was not in it. He said the issue is what the public was told when the bond was passed about the costs of these projects. He asked what the long term problems for the library are going to be because of these over expenditures.

Commission Discussion

Commissioner Breyer said the Quarterly Report says that we do not expect an additional sale of revenue bonds and that is terrific news. He asked about the impact if the North Beach Branch is listed on the National Register.

Jill Bourne, Deputy City Librarian, said the listing would have no legal impact and that the local decision would take precedence.

Commissioner Breyer asked about the Friends contributions to the BLIP.

Jill Bourne, Deputy City Librarian, said the amount listed as Friends' contributions does not include money the Friends have spent directly on Furniture and Fixtures.

Mindy Linetzky, DPW, said that the public tour of the Visitacion Valley Branch was done through DPW and was part of tours of five buildings DPW is involved with.

Commissioner Randlett said it appears that some of the projects remaining have been the most difficult to execute and therefore significant funds may be in reserve to use on those projects. She said it sounds like the team was prudent in making sure that there were funds in reserve. She said she is not surprised with the size of the projects and the number of change orders there has been. She said it looks like Visitacion Valley and Ortega seem to have many more than the others.

Lena Chen, Bond Program Manager, said these amounts reflect pending change orders that are coming. She said Visitacion Valley is one of the largest and complex of the branches. She said the contractor did not have as much experience with these types of projects.

Commissioner Randlett said the City has an obligation to the public to meet the highest quality and this may have been a challenge to the construction team that was awarded the bid.

Jill Bourne, Deputy City Librarian, said all of these changes are within the project contingencies so we are not anticipating any budget change.

Lena Chen, Bond Program Manager, said they have had difficulty in working with the contractor on the Ortega Branch.

President Gomez said we are getting near to the end of the process and there have been a number of lessons learned. The new Commissioners are seeing the benefits of the process.

Commissioner Breyer said the Auditor's Report encouraged the Library to look at the contracts with the contractors and get compensation from contractors who cause delays.

Jill Bourne, Deputy City Librarian, said it is an ongoing process and that DPW works closely with the contractors.

AGENDA ITEM NO. 3. APPROVAL OF THE MINUTES OF APRIL 7, 2011

Public Comment

An anonymous citizen said during the item on the naming of the Him Mark Lai Branch on page 4 he had asked about what sort of funding would be done and said that the library would have responsibility for the funding. He said the President later made comments and said she hoped members of the audience would not take offense by any members of the public's comments about the fundraising. He said his comment contained no offense to the people in the community. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said on page 4 his comments are summarized but it left out his comments about what arrangements were being made with respect to the way the money was raised and his concern about the financial issues. He said on page 1 the Minutes state that he said the Friends have contributed less than \$1 Million to BLIP and he did not say that and would like to have that corrected.

Ray Hartz, Director San Francisco Open Government, said some of the questions not asked by this Commission would cause you to be fired in the private sector. He said his complaint regarding the Minutes will be going back again to the full Sunshine Task Force referred back by the Education and Outreach Committee. He said the issue of the 150 word summary being included in the body of the Minutes has never been on the agenda for the Commission to discuss.

Commissioner Comments

Commissioner Breyer said he thought we were following what the Sunshine Task Force suggested for the Minutes.

Sue Blackman, Commission Secretary, said the Sunshine Task Force issued an Order of Determination finding the Library Commission not in compliance with the Sunshine Ordinance, but they sent the issue to the Education and Outreach Committee. She said the two members of the Committee who were in attendance referred the issue back to the Task Force for further review.

President Gomez said we are continuing to do the Minutes in the way in which we have been and within our legal rights.

Sue Blackman, Commission Secretary, said the City Attorney is preparing a memo to address the issue.

Commissioner Breyer said his suggestion is to follow what the Sunshine Task Force suggests.

President Gomez asked the Secretary to check the tape for the statement by Peter Warfield on page 1 and to correct that statement if necessary.

Commissioner Randlett said she appreciated the statement from President Gomez trying to clarify the comments regarding the Him Mark Lai fundraising.

Motion: By Commissioner Munson, seconded by Commissioner Randlett to approve the Minutes of April 7, 2011 with a correction to page 3 to read "Jill Bourne responded to a question from Commissioner Breyer." Also with a clarification as needed to Peter Warfield's remarks on page 1.

Action: AYES 5-0: (Breyer, Gomez, Munson, Ono, and Randlett).

AGENDA ITEM NO. 4. ADJOURNMENT

Public Comment

There was no public comment on this item.

Motion: By Commissioner Ono, seconded by Commissioner Munson to adjourn the regular meeting of May 19, 2011.

Action: AYES 5-0: (Breyer, Gomez, Munson, Ono and Randlett).

The meeting adjourned at 5:48 pm.

Sue Blackman
Commission Secretary

Please note: These are draft minutes subject to revision by the Public Library Commission. Copies of commission minutes and handouts are available in the office of the secretary of the San Francisco Public Library Commission, 6th floor, Main Library, 100 Larkin Street, San Francisco, CA 94102-4733.

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6th floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <http://sfol.org>. Additional

materials not listed as explanatory documents on this agenda, if any, that are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

ADDENDUM

These summary statements are provided by the speaker: Their contents are neither generated by, nor subject to approval or verification of accuracy by, the San Francisco Public Library Commission.

Library Commission Meeting of May 19, 2011

Item 1: General Public Comment

Anonymous Citizen: Stop the Corporate Rape of the Library – Don't give or accept money from the Friends & Foundation

The history of the human mind is an attempt to be free from the tyranny of injustice.

Essential to that freedom is mankind is equal before the truth. Religions teach that we are all equal before God, and laws and literature teach us that knowledge belongs even to the poor.

Some people were not born to be our masters. The idea of the public library is that knowledge should not be limited to wealth and power.

Your president makes a big display of not listening, then accuses the public of not listening, a cheap trick to enforce the barriers of exclusion, called the "Veranda Factor."

You maintain the fiction that our access to the truth doesn't merit your attention, when this commission was created as a public forum.

"The lies cost more than the money."

Ray Hartz, Director San Francisco Open Government: Having attended most of the Library Commission meetings over the last year, I have come to the conclusion that there are serious deficiencies in the way the commission goes about its business. The primary purpose of this commission is to oversee the operations of the library and other bodies such as Friends of the Library, to ensure not only that the operations benefit the library, but, that they do so to maximum effect. To perform their function in an appropriate manner this

commission needs to modify its behavior. The move needs to be from what it is, a mutual admiration society, toward becoming a body focused on its fiduciary responsibility to oversee matters within its area of oversight. At the present time, the commission provides little real oversight, acting primarily as a rubber stamp for recommendations placed before it. This is far, far distant from what most members of the public would expect.

Item 2: Bond Program Manager's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

It would be nice if the citizens had access to the graphics. I have some nice shots of branch openings which you might enjoy.

I regret that I missed the tour of Visitacion Valley. I guess I missed the announcement.

Regarding North Beach Branch on the National Registry, the City Librarian testified before the Board of Supervisors that he found it a waste of resources to be required to oppose concerns about historical preservation. This undermines his credibility on historical preservation issues.

The North Beach Branch is not resolved and national recognition might wake us up to the significance of that branch.

I was at the Merced Branch Opening and missed the band that had played at Presidio and Park Branches, which I hesitate to mention that because it was probably paid for by the Friends.

Item 3: Approval of the Minutes (April 7, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't accept money from the Friends & Foundation.

Regarding naming opportunities for the Him Mark Lei Branch, I questioned the library's responsibility if people hung out on street corners raising thousands of dollars, which was answered by selling names on the plaque.

Eight and one-half minutes later, your president said, "I hope you will not take offense at any members of the public's implication that people from the Chinatown

community would be raising funds in an alley. I hope you will not take offense at that."

My comment contained no offense and didn't mention alleys.

Mr. Coulter would misquote and mischaracterize me, then impute some motive to me to expose me to general obloquy and ridicule – a week later.

This sleazy game to prevent discussion shows no obligation to recognize a non-donor's right to decency and truth.

You're attempting to fill Steve Coulter's shoes? "I knew Steve Coulter. You're no Steve Coulter."

San Francisco Public Library
100 Larkin Street Room 680
San Francisco, CA 94102

June 27, 2001

To whom it may concern-

Pursuant to California Public Records Act, Government Code Section 6250, and the San Francisco Sunshine Ordinance, San Francisco Administrative Code Section 67.1 and all other applicable laws, I am writing to request copies of the following documents:

1. A list of any contracts awarded without competitive bids from 2009 to present, including no-bid contracts and sole-source contracts.

I understand that certain costs might be associated with this request. Please contact me if payment is required prior to releasing copies.

Should the requested information be unavailable, please respond stating the reasons for denial of the request. Additionally, should the requested information be available from another agency please provide me with information regarding who to contact to obtain the requested documentation.

Documents can be e-mailed to me at VA.Holliday@gmail.com. I may also be reached by phone at 415-308-7342 should you have any questions in regards to this request. Thank you for your time and consideration of this request.

Sincerely,
Victoria Holliday



San Francisco Public Library Commission

100 Larkin Street, San Francisco, CA 94102-4733

Phone 415.557.4233, Fax 415.557.4240

DRAFT

SAN FRANCISCO PUBLIC LIBRARY COMMISSION

Minutes of the Regular Meeting of June 16, 2011

The San Francisco Public Library Commission held a regular meeting on Thursday, June 16, 2011, in the Koret Auditorium, Main Library.

The meeting was called to order at 4:32 pm.

Commissioners present: Breyer, Gomez, Munson, and Ono

Commissioners excused: Nguyen and Randlett

Commissioner Kane arrived at 4:40 pm.

President Gomez announced that item number 4 the Bond Program Manager's Report will be trailed to the end of the meeting.

AGENDA ITEM NO. 1 PUBLIC COMMENT

An anonymous citizen said his essay on the Community Benefit District was published by Counterpoise, a national library publication. He said Commissioners Kane and Breyer have made suggestions regarding the Minutes that the Library Commission might be reasonable. He said Commissioner Kane asked if the Commission was following the Sunshine Task Force's recommendation and was told that it was when you were not. He said later Commissioner Kane suggested that the wording be changed to read "See Addendum in the minutes." He said that was followed once and then ignored. He said Commissioner Breyer was told the Library Commission adopted this policy when it did not. He said the Commission resists change that would benefit the public. (See Addendum for a summary of this comment submitted by the speaker.)

Sue Cauthen said she wanted to thank Commissioner Breyer and the new Commissioners for their insightful questions. She said she is a member of the Sunshine Task Force and she has volunteered her time all these years because she truly believes in public participation and our first amendment rights. She said she is disappointed when she sees a

Edwin M. Lee
Mayor

Jewelle Gomez
President
A. Lee Munson
Vice-President

Michael C. Breyer
Larry Kane
Michael Nguyen
Teresa Ono
Lorna Randlett
Commissioners

Luis Herrera
City Librarian

Sue Blackman
Commission Secretary



member of the Commission speaking contemptuously of the Sunshine Ordinance and she hopes it was an anomaly.

Peter Warfield, Executive Director, Library Users Association, said he appreciates the questions that have been asked by some of the Commissioners but it is unfortunate that they do not receive straight answers. He said an example is the question of the time limits on computers and saving documents from the computer. He said when you don't have computers that allow saving on them that is a problem.

Ray Hartz, Director San Francisco Open Government, said the common definition of fiduciary duty is 'the legal duty of a fiduciary to act in the best interests of the beneficiary.' He said despite numerous calls for a clear accounting of the funds raised by the Friends no such accounting has been produced. He said either the Commission knows the numbers or those numbers do not reflect well on either the Friends or the Commission or worse they don't know the exact numbers. He said if the numbers were a real benefit to the Library they would have been produced. He said the Commission should ask for a complete accounting from the Friends or the Commission should admit its failure to live up to its fiduciary responsibility to oversee the Friends. He said the last accounting by the Friends listed a gross income of over \$5 million. (See Addendum for a summary of this comment submitted by the speaker.)

AGENDA ITEM NO. 2 BERNAL HEIGHTS BRANCH LIBRARY ARTWORK PROJECT

Luis Herrera, City Librarian, said there is a memo to the Commission describing the background and he gave a presentation on the Bernal Mural. He said the community had a mediation process initiated by Supervisor Campos. He said the Statement of Consensus from that group is also available as well as a Presentation of the Bernal Heights Branch Library. He introduced Gia Grant who has been leading the project conversation.

Gia Grant said she came on as project manager late last year and put out a call for artists. She said they received six applications and three were chosen. She said subsequently one has dropped out. She said Precita Eyes took the lead on the Cortland side and Reuben Rude on the Moultrie side, but they are working together so that it would be unified. She said they are also working on the backside of the building as well. She said the project will be done in mosaic and tile.

Larry Cruz said he was representing the Bernal Heights Neighborhood Center on the Task Force. He said there were two community meetings attended by more than 100 people.

Gia Grant said they heard from people in the community that it was very important to have some of the images from the original mural in the new artwork. She said there are no design drawings yet for the back side

because it was a phased project and that it will be brought back to the Library Commission and Art Commission once it is finalized.

Luis Herrera, City Librarian, said that this meeting is informational and it will be brought back for action at the July 21, 2011 meeting. He said the Commission's role is to endorse this project but ultimately the approval of the artwork will be done by the Arts Commission in August. He said this will be paid for primarily through private fundraising and grants and a commitment for up to \$25,000 from the paint portion of the building for the project.

Public Comment

An anonymous citizen said this has been a long and interesting controversy. He said there is a mural that is not part of the library although it looks like it is. He said there is a hopeful statement in the Consensus that fifty years from now people will honor our contribution. He said an essential aspect of that is that you have to honor what people did fifty years ago because they had the same hope. He said he is pleased this had a happy resolution, and my thanks to all concerned. (See Addendum for a 150 word statement submitted by the speaker.)

Ellen Egbert, Bernal resident and Bernal Library user. She said nobody is going to be happier to see this resolved than she is. She said it has been going on for years and years. She said most residents are ecstatic about the beautiful new interior of the branch but she thinks most residents are embarrassed by the exterior. She said communication in the community has been very limited. She said the artwork and the description only went up two days ago. She said she is concerned about how the building prep will be handled. She had questions about the quantity and quality of the tiles. She said the bronze relief of the book is to be 12' long and that will be very heavy but she hopes it does not get stolen.

Peter Warfield, Library Users Association, said he is surprised to hear from the previous speaker that the public has only seen the artwork two days ago. He said he is disappointed that the front of the building is missing some elements from the previous mural. He said the Spanish language on the front has been noted in the past as a highlight to the mural. He said he hopes the Commission will ask specific questions and get some specific answers.

Ray Hartz, Director San Francisco Open Government, said he would hope the Commission would not take any action on this item today. He said the drawings have only been available to the public within the last couple days. He said the process has been long and contentious. He said he understood that the Friends of the Library have committed \$16,000 to the project and he would like to see if that will be included in the total budget for the project.

Beth Roy said she was the mediator for the process. She said for her it was the best of San Francisco and the controversy was heated and went

beyond issues that had to do with art such as class and race. She said the outcome has produced the artwork before the Commission. She said she is glad there will be a second meeting and glad that the community has had an opportunity to come together and discuss some of these issues.

Rosanne Liggett said the committee worked under a great deal of duress. She said the committee had some flaws that it was heavily weighted from people from the neighborhood center and excluded people who had worked in the library as volunteers. She said the artwork is a result of that imbalance. She said the artwork needs some adjusting and she hopes the committee will be open to hearing criticism and comment. She would like to see more than one choice and possibly different artists. She said she does not like the artwork for the front of the building and said it is incongruent with the design of the building.

Sheila Chung Hagen, Legislative Aide to Supervisor David Campos, said she is also a Bernal Heights resident. She said when this issue first came to the Supervisor's office it was clear as Beth Roy said that it was about much more than art work. She said Supervisor Campos spent dozens of hours involved in the mediation. She said what is important is that the process has been inclusive. She said we will be able to add additional input from the community and she hopes the Commission will continue to support the project and they hope that the Arts Commission will as well.

A woman from the audience said she does not see any women in the artwork. She said she thinks it is ugly.

Commission Discussion

Commissioner Kane thanked everyone who has been involved in this effort. He said his understanding is that it is the Arts Commission that will approve the artwork going on the library and the Library Commission will approve the expenditure of \$25,000 from the painting budget towards the project.

Luis Herrera, City Librarian, said he thinks the Arts Commission will look to an endorsement by the Library Commission of the project before they take action. He said yes the Commission will have to approve the expenditure. He said the action of the Library Commission would be to allow or endorse the project going on the building.

Commissioner Kane said he would defer to the community and the Arts Commission on the artwork. He asked if the Library would have to maintain whatever artwork is on the building.

Luis Herrera, City Librarian, said maintenance is an issue that should be discussed.

Gia Grant said the mosaic tile will last twice as long as a mural. She said as part of the grants to fund the project there is a built in maintenance

plan and the Bernal Business Association have committed to taking an active role in maintaining the artwork.

Commissioner Munson had questions about the artwork. He said if the community really wants this, that is fine, but he thinks it is a little strange.

Commissioner Ono said she is concerned about the process. She said it looks like there has not been a lot of time for the community to look at it. She asked about the committee and how the outreach about the public meetings was done.

Gia Grant said over 100 people participated in the process. She said the artists were selected by the committee. She said the prep work is largely built into the budget for the project.

Larry Cruz responded to comments from Commissioner Munson and said there was a tremendous amount of acrimony on both sides of the issue. One side wanted no mural on the building and the other side felt that their own history was being erased. He said there was a decision to have both side represented. He said this mediation was an incredible way of bringing people together. He said the committee is still meeting every two weeks to discuss all of the issues.

President Gomez said it is not clear that any women are incorporated in the artwork. She said she would like to know more about security.

Gia Grant said they will be working with the library on how the book will be affixed and the security for it. She said there are mechanisms for people to respond with there comments.

Commissioner Breyer said all of the neighborhood groups should be contacted.

Gia Grant said it will come back to the Commission in July and then go to the Arts Commission on August 1.

President Gomez said she commends the committee, Beth Roy and everyone involved in this process for their hard work.

AGENDA ITEM NO. 3. BRANCH LIBRARY IMPROVEMENT PROGRAM SCHEDULE CHANGE

Jill Bourne, Deputy City Librarian, said that there is a memo before the Commission asking for a schedule change for the Golden Gate Valley Branch Library. She said the approved schedule shows the opening June 2011. She said they are requesting a three month schedule change so that the branch will open in September 2011 due to unforeseen site conditions requiring additional excavation, shoring and foundation work.

Public Comment

An anonymous citizen said it would be nice to know more details about the soil conditions that caused the delay and why exactly it has caused a three month delay.

Peter Warfield, Library Users Association, said further specificity would be helpful. He said the memo says one of the causes of the delay is "the demolition of the existing foundation discovered during construction." He said this does not make sense to him. He said the memo does not say what the cost impacts are that are being covered by the project contingency budget. He said he hopes the Commission will ask some questions

Ray Hartz, Director San Francisco Open Government, said Commissioner Ono in the past has asked whether we are learning anything when these changes occur. He said either we will learn something in this process that will help us in this process or not and to do that we need more specificity. He said it would be nice to know what the contingency fund is and how these changes are affecting the funds.

Commission Discussion

Commissioner Munson said there is a contingency fund for each branch and asked about the amount.

Jill Bourne, Deputy City Librarian, said that the contingency is usually between 10 and 15%. She said the contingency has been raised to cover any unforeseen expenditures.

Luis Herrera, City Librarian, said that as projects are closed out money left over from the contingencies will be transferred into the reserve.

Commissioner Munson said he would like more information on the contingency for each project.

Motion: By Commissioner Kane, seconded by Commissioner Munson to approve the schedule change of three months for the Golden Gate Valley Branch Library.

Action: AYES 5-0: (Breyer, Gomez, Kane, Munson, and Ono).

AGENDA ITEM NO. 5. CITY LIBRARIANS'S REPORT

Luis Herrera, City Librarian, said there is a memo from Alicia Cabrera, Deputy City Attorney, in response to a question from the Commission regarding the 150 word summary in the Minutes. He said the memo quotes the language from the City Attorney's Good Government Guide. He said the Commission is following the advice of the City Attorney in preparing its Minutes. He said he wanted to give a recap on the FY 11-12 Budget. He said there will be two meetings before the Board of Supervisors Budget and Finance Committee. He said the changes are highlighted. He said there has been a total of \$2.1million increase in the

actual revenue. He said that means we will be drawing less from the Library Preservation Fund balance. He said on the expenditure side for Personnel Services it shows a slight increase of 1%. He said most of that comes from the retiree health benefit subsidy and there were other reductions in positions. He said the overall increase is about \$567,022. He said his message to the Board of Supervisors is that we are pleased with the budget because it maintains our service levels. He said related to the budget is print notices.

Jill Bourne, Deputy City Librarian, gave a presentation on print notices and the plan to reduce costs, paper use, and waste. She said one of the items in the FY 12 Budget proposal was to reduce print notices and costs for direct mail with a target annual savings of \$100,000. She said the Commission endorsed that budget in February, 2011. She said a plan was developed to implement the strategy. She said a major focus has been communications to notify patrons and staff about the change. She said Patron Assistance is and will continue to be a priority through the process. She explained the timeline for implementing the change.

Luis Herrera, City Librarian, said there is a memo from the Department of Technology regarding a new program which enables all Commissions to comply with the amended Sunshine Ordinance Section 67.14C which directs that Commissions record their meetings and make the audio content available on SFGov.org. He said we are one of the Departments to move forward on this.

Jon Worona, Digital Initiatives Manager, said Meetings on Demand is up and running. He said it is effective now. He showed a demonstration of how you can access recordings of the meetings through our website. He said you can also post the minutes of the meeting on the same site.

Sue Blackman, Library Commission Secretary, said that if you click on the agenda posted with the audio streaming there are links to the various explanatory documents being discussed.

President Gomez left the meeting and Vice-President Munson took over as Chair.

Public Comment

An anonymous citizen said the overarching issue is the abandonment of overdue notices and the budget. He said he was at the Board of Supervisors meeting of May 24 where they approved an expenditure of \$360,000 from the Library Preservation Fund's Available Fund Balance or what we call the reserve. He said this is expenditure for the City Attorney's office and he doesn't think this has been done before. He said this should have come before the Commission at least as an informational item. He said at the Ethics Commission on May 9, the Ethics Commission received a request from your library administration to change the Incompatible Activities policy, which has never been approved by you. He said the Incompatible Activities policy you approved on July

15, 2004, was never rescinded or superseded. He said Jill Bourne told the Ethics Commission that there was not enough input from the library staff and too much input from the public.

Peter Warfield, Library Users Association, said in order to save a supposed \$100,000 a year which is less than .8% of your budget you are chopping out a core function of this library, which is getting back the books which are borrowed. He said there are many people who do not have email or computer access. He said this will hurt those who are least able to afford it. He said some people will have overdue books that they don't know about and could get in such trouble that they will never come back to the library. He said it is a major change and is shocking that the Commission has not discussed this. He said the City Attorney's memo is a shameful evasion of your responsibility to the public and without regard to any specific law. He said the amount of time and effort you are taking to avoid putting the 150 word summaries in the minutes is appalling.

Ray Hartz, Director San Francisco Open Government, said the memorandum from the City Attorney's Office is not a legal opinion and not even a well written memorandum. He said it is simply a restatement of the City Attorney's self-serving interpretation of the Sunshine Ordinance from the Good Government Guide. He said like it or not the Sunshine Ordinance is a law and the law states that the Sunshine Ordinance Task Force is the body that has the authority and responsibility for determining what the law means. He said the reason the Ordinance does not require a cross reference in the minutes is because the actual wording of the law directs that the statement "If no more than 150 words, be included in the minutes." He said it's that simple. He said this is a dance. He said he has no problem with having his comments fact checked.

Sue Cauthen said she is a member of the Sunshine Task Force. She said the Good Government Guide is just that a guide, she said it is not the law. She said she does not believe that a court of law would consider it the law.

Val Pescador said she would like to request a review for a pay hike for all your staff. She said they are the best staff and most friendly and she cannot even begin to tell this Commission how helpful they have been. She said she wants a pay hike for the maintenance people and others on the staff.

Commission Discussion

Commissioner Kane said he didn't understand the increase in the budget for health care subsidies. He said his understanding is that there are proposals to actually reduce those numbers so he said he was hoping those numbers would go down.

Luis Herrera, City Librarian, said the assumptions that are made are already built into the budget. He said any savings from pension or

retirement benefits would be long term. He said there are different labor groups involved in negotiations. He said the bulk of our employees are SEIU and to this point they have not been part of this conversation. He said the amount has gone up because the Controller's numbers have gone up.

Commissioner Kane asked about the allocation from the reserve that the anonymous citizen mentioned in public comment.

Luis Herrera, City Librarian, said they are aware of litigation going on right now that involves several departments including the library regarding ADA accessibility, so Departments are required to pay their share for that. He said that is our portion. He said he would find out more about that for the Commission.

Commissioner Kane said he is all for electronic notices in all forms but he does not understand the default notification.

Jill Bourne, Deputy City Librarian, said the default will no longer be a paper notice and they are working to make sure individuals choose the type of notice they would like to receive.

Commissioner Kane said to him the notice should be paper by default and he would rather pay extra unless the patron chooses otherwise.

Commissioner Munson said he supports Commissioner Kane's position that paper notice should be the default.

Commissioner Breyer asked about the process.

Jill Bourne, Deputy City Librarian, explained the process for changing patrons over to electronic notices.

Commissioner Ono said her understanding is that as of July 1 the notices would automatically go to email or phone number and the patron would no longer receive print notices.

Luis Herrera, City Librarian, said it is a proactive approach to saving money by virtue of moving away from mail notices with the option to opt into the mail notices. He said we will go back and revisit this but it has been a proactive approach.

Commissioner Breyer said it is a good idea to change the vast majority of people to electronic noticing and he would commend the staff on this effort. He asked about the Sunshine Task Force's action regarding the minutes.

Sue Blackman, Commission Secretary, said the Sunshine Task Force found that the Library was not in compliance with the Sunshine Ordinance regarding the minutes and referred it to their Education and Outreach

Committee who has referred it back to the full Sunshine Ordinance Task Force to hear it again.

Commissioner Breyer said the Commission should do what the Sunshine Task Force determines with the Minutes.

Commissioner Munson said we should wait for the full determination from the Sunshine Task Force.

Commissioner Breyer said he wondered what the Commission thought of having the video of the Commission meetings available on the website. He asked about the costs to the library of making the video available on the web in addition to the audio.

Commissioner Munson asked if we could bring the discussion about the video back to the Commission at a later date.

AGENDA ITEM NO. 7. APPROVAL OF THE MINUTES OF APRIL 25, 2011

Public Comment

An anonymous citizen said this meeting was a joint meeting and so there should be joint minutes. He said I suppose there is some concern by the Recreation and Park Commission about having citizen summaries attached to joint minutes, but that is their problem. He said the minutes are pretty good. He said Commissioner Kane's wording for citizen summaries are not there and his nice reference to Ray Clary is also missing. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the comments he has made are incomplete and misleading. He said he was objecting to the planned plaque not having to be in or on the new library. He requested that the language be corrected. He said Library Users Association (LUA) has been one of the most active opponents of North Beach Branch demolition and supporters of renovation and that it was why it was inappropriate that Mr. Herrera's memo would leave the LUA off the list of organizations opposed to the new library. He said the email notices from the last item are very privacy threatening.

Commissioner Comments

Commissioner Breyer said at the bottom of page 4 it says "she" instead of "he".

Commissioner Ono said on page 5 Library Commission President Gomez said "I believe I speak for" and that should be "she believes she speaks". She said on page 3 she was confused by Mr. Warfield's remarks and would like it to read "He objected that the planned plaque. . ."

Commissioner Munson said he would like the word new to be inserted to Mr. Warfield's statements so that it reads "He said Mr. Herrera's memo lists a number of organizations opposed to the new library, but does not include the Library Users Association."

Motion: By Commissioner Kane, seconded by Commissioner Ono to approve the Minutes of April 25, 2011 with corrections to the Minutes as noted by the Commissioners above.

Action: AYES 4-0: (Breyer, Kane, Munson, and Ono).

AGENDA ITEM NO. 8. APPROVAL OF THE MINUTES OF MAY 5, 2011

Public Comment

An anonymous citizen said these minutes are a little more problematic. He said at the beginning of the meeting Commissioner Randlett is listed as excused, but it was announced at the meeting that she was expected. He said one cannot be expected and excused at the same time. He said the terminology used to be "asked to be excused." He said his comment under public comment is backward. He said he told the story about Commission Chin first and then the comment fund was after that. He said on page 3 it says Commissioner Breyer asked about "two last questions" but those questions were not addressed. He said on page 8 Mr. Kane had asked that going forward the 150 word summaries should be referenced by a statement "see addendum included at the end of the minutes." He said this was followed once on May 19 and never followed again. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association (LUA), said he talked about the Library's rewriting of history. He said the LUA was one of the active organizations in opposition to a new North Beach Library as opposed to a renovated one. He said on page 5 Commissioner Breyer asked about the use of 15 minute terminals and there was not a complete answer to his question and that was not included in the Minutes.

Ray Hartz, Director San Francisco Open Government, said he is the party to the case before the Sunshine Ordinance Task Force (SOTF) he would like to make sure you clearly understand what went on. He said the SOTF found the Commission in violation of the Sunshine Ordinance for not including the summary statements in the body of the minutes. He said in the determination they referenced the fact that they had found in the past that referencing them and attaching them was appropriate. He said when he challenged them they admitted that they had never had such a discussion. He said the Education and Outreach Committee said that the summaries should be included in the body of the Minutes and sent the issue back to the SOTF and that is where it stands today. He said he would like to see an open and honest discussion about this by the

Commission. He said the Brown Act is there to protect the right of the people.

Commission Discussion

Commissioner Breyer said on page 4 there is a typo in the remarks of the anonymous citizen and the word "crasheds" should be changed to "crashes".

Commissioner Kane asked about the language that was in the Minutes about the summary statements.

Sue Blackman, Commission Secretary, said the City Attorney had suggested that the language be changed to "See Addendum for a summary of this comment submitted by the speaker."

Commissioner Kane said he supported the City Attorney's suggestion.

Commissioner Ono said on page 2 under public comment it should say the "An anonymous citizen said" instead of "He said".

Commissioner Munson said on page 4 there is a vertical line that should be taken out. He said on page 8 under the motion it says that the motion was seconded by Commissioner Munson and it should read "Commissioner Kane".

Motion: By Commissioner Kane, seconded by Commissioner Ono to approve the Minutes of May 5, 2011 with corrections to the Minutes as noted by the Commissioners above.

Action: AYES 4-0: (Breyer, Kane, Munson, and Ono).

Vice-President Munson said Item No. 4 Bond Program Manager's Report would be trailed to the next meeting.

AGENDA ITEM NO. 9. ADJOURNMENT

Public Comment

There was no public comment on this item.

Motion: By Commissioner Breyer, seconded by Commissioner Ono to adjourn the regular meeting of June 16, 2011.

Action: AYES 4-0: (Breyer, Kane, Munson, and Ono).

The meeting adjourned at 7:01 pm.

Sue Blackman
Commission Secretary

Please note: These are draft minutes subject to revision by the Public Library Commission. Copies of commission minutes and handouts are available in the office of the secretary of the San Francisco Public Library Commission, 6th floor, Main Library, 100 Larkin Street, San Francisco, CA 94102-4733.

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6th floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <http://sfpl.org>. Additional materials not listed as explanatory documents on this agenda, if any, that are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

ADDENDUM

These summary statements are provided by the speaker: Their contents are neither generated by, nor subject to approval or verification of accuracy by, the San Francisco Public Library Commission.

Library Commission Meeting of June 16, 2011

Item 1: General Public Comment

Anonymous Citizen: Stop the Hate & Ignorance – Don't give or accept money from the Friends & Foundation

You will be happy to learn that my essay on the Community Benefit District was published by Counterpoise, a national library publication.

Your handling of the minutes is instructive. Commissioners Kane and Breyer have made suggestions that the Library Commission might be reasonable. They ran into the same stone wall that I would.

Commissioner Kane was told the Commission was following the Sunshine Task Force's recommendation, when you weren't. Commissioner Kane suggested the wording, going forward, "See Addendum in the minutes." That was followed once, and then ignored.

Regarding not following the Sunshine Task Force, Commissioner Breyer was told the Library Commission adopted this policy, when it didn't.

You resist any change that would benefit the public as a defense to your arbitrary and capricious authoritarianism.

"The lies cost more than the money."

Ray Hartz, Director San Francisco Open Government: A common definition of fiduciary duty is "the legal duty of a fiduciary to act in the best interests of the beneficiary." Despite numerous and continuous calls for a clear accounting of the funds raised by the Friends and how much of those funds actually reach the Library coffers, no such accounting has been produced. Either the Library Commission knows the exact numbers and those numbers do not reflect well on either the Friends or the Library Commission or, perhaps worse, they don't know the exact numbers! By now, if the numbers were truly reflective of a real benefit to the Library, they would have been produced. I call for a complete and responsible accounting for all such funds, or, in the alternative for the Library Commission to admit their failure to live up to the fiduciary responsibilities they have to oversee the Friends of the San Francisco Public Library.

Item 2: Bernal Heights Branch Library Artwork Project

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

This has been a long controversy. I hope you recognize that the statement of consensus was not arrived with ease or mutual cooperation. It was worked out with antagonism and adversarial confrontations. One wishes that you had recognized some of the principles before you were forced to.

There is a mural in some dilapidation that is not included and is probably not part of the library although it looks like it is.

There is a hopeful statement that fifty years from now people will honor our contribution. An essential aspect of that is that you have to honor what people did fifty years ago because they had the same hope.

I am pleased this had a happy resolution, and my thanks to all concerned.

Item 5: City Librarian's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

The overarching issue is abandonment of overdue notices.

The Supervisors at their meeting of May 24, approved \$360,000 from the Library Preservation Fund's "Available Fund Balance," what we call the "reserve." While not much money, it will seem a lot when you can't keep up Sunday hours, the book budget, or overdue notices. It should have come before you just in terms of public notice.

On May 9, the Ethics Commission received a request from your library administration to change the Incompatible Activities policy never approved by you. The Incompatible Activities policy you approved on July 15, 2004, was never rescinded or superseded.

Jill Bourne explained that the 2004 policy had insufficient input from the library staff and too much input from the public, as if the process was not exclusive enough. The issue is public notice and due consideration.

Ray Hartz, Director San Francisco Open Government: The memorandum from City Attorney's Office is NOT A LEGAL OPINION! In fact, it's not even a well worded memorandum! This memo is simple a restatement of the City Attorneys self-serving interpretation of the Sunshine Ordinance from the Good Government Guide. Like it or not the Sunshine Ordinance is a law and the law states that the Sunshine Ordinance Task Force is the body that has the authority and responsibility for determining what the law means. In the tortured wording of the memorandum: "While not the Sunshine Ordinance does not require the cross reference, it will facilitate public access to written summaries of comments." The reason the ordinance does not require the cross reference is because the actual wording of the law, appearing earlier in the same memorandum, directs that the statements "If no more than 150 words, be included in the minutes." It's that simple!

Item 7: Approval of the Minutes (April 25, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends & Foundation.

This was the joint meeting with the Recreation and Park Commission and there should be joint minutes. There is a caveat that this is only showing library commission actions. I don't know what rationalization that could have. I suppose there is some concern by the Recreation and Park Commission about having citizen summaries attached to joint minutes, but that is their problem.

The minutes are pretty good. The request of Commissioner Kane that the wording for citizen summaries "See addendum included in the minutes" is no longer there.

My nice reference to Ray Clary is also missing, but otherwise not so bad.

Item 8: Approval of the Minutes (May 5, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't accept money from the Friends & Foundation.

Commissioner Randlett is listed as excused, but it was announced that she was expected. One cannot be expected and excused at the same time. The terminology used to be "asked to be excused."

The comment of the anonymous citizen is backwards. The story about Commissioner Chin saying "shut up" was first and the dismissive purposes of the public comment fund was after that.

Page 3 states that Commissioner Breyer asked about the "last two questions." What two questions? This is an example of Mr. Breyer not getting an answer. He asked about pornography visible to school children, not censorship on the terminals.

Page 8 is where Commissioner Kane asked that going forward the wording for reference to the citizen summaries should be "see addendum included at the end of the minutes." This was followed once on May 19, and not again.



"Sue A. Blackman"
<sblackman@sfpl.org>
08/16/2011 01:56 PM

To "soft@sfgov.org" <soft@sfgov.org>, Luis Herrera
<herrera@sfpl.org>, "rwhartzjr@sbcbglobal.net"
<rwhartzjr@sbcbglobal.net>

cc

bcc

Subject Complaint # 11055

History: This message has been forwarded.

August 16, 2011

Members, Sunshine Ordinance Task Force
c/o Chris Rustom
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint #11055 Ray W. Hartz v. Library Commission

Dear Task Force Members:

This letter responds to Complaint #11055, which was signed by Ray Hartz on July 26, 2011 and sent to the San Francisco Public Library ("SFPL" on August 2, 2011. For the reasons set forth below, the complaint is without merit and should be dismissed.

The Complaint

The complaint alleges that Luis Herrera, the SFPL Librarian, violated Section 67.21 (c) of the Administrative Code for failure to assist a member of the public's request for assistance in identifying documents in the Library's custody and for failure to respond appropriately or on a timely basis.

On Thursday evening, July 21, 2011 at the Library Commission an Immediate Disclosure Request (IDR) was handed to the City Librarian by Mr. Hartz. SFPL acknowledged Mr. Hartz' request on Monday, July 25, 2011 and provided Mr. Hartz with two separate PowerPoint presentations and the Public-Private Support and Cooperation Framework for Branch Library Improvement Program (Framework document). We also identified another document, the Annual Report for 2007-08 and 2008-09 by SFPL and the Friends of SFPL, which he might be interested in perusing. While SFPL requested a 14-day extension to identify additional types of documents that SFPL might have, SFPL did in fact respond to Mr. Hartz' request in an appropriate and timely manner.

Mr. Hartz responded on July 26, 2011 stating that our response was non-responsive. We replied on July 16, 2011 and disagreed with Mr. Hartz' characterization of our timely response. Notwithstanding Mr. Hartz' allegations, SFPL continued to research his request.

Based on documents SFPL provided i.e. the two PowerPoint presentations and Framework document, Mr. Hartz submitted a subsequent IDR on July 28, 2011. Mr. Hartz' July 28, 2011 IDR referred to the Framework document and requested the Friends' "independently prepared audits" for years 2008, 2009 and 2010. We responded to his request following day on July 29,

2011, with the "independently prepared audits" documents: The Friends and Foundation of the San Francisco Public Library/Financial Statements for the Years Ended June 30, 2010 and 2009/Report of Independent Auditors," and "The Friends and Foundation of the San Francisco Public Library/Financial Statements for the Years Ended June 30, 2009 and 2008/Report of Independent Auditors."

On August 4, 2011, (see attached) we followed up again and listed four additional documents which might be responsive to his first request.

Conclusion

The Library believes it has fully complied with Administrative Code Section 67.21(c) in assisting Mr. Hartz to identify records and information that are responsive to his request or purpose of his request and we believe this Complaint should be dismissed.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this Complaint, please do not hesitate to contact me.

Sincerely,

Sue Blackman
Custodian of Records,
Library Commission Secretary
San Francisco Public Library
100 Larkin Street
San Francisco, CA 94102-4733
415.557.4233

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Official SFPL use only



8.4.11 response.pdf

Sue A. Blackman

From: Sue A. Blackman
Sent: Thursday, August 04, 2011 1:38 PM
To: rwhartzjr@sbcglobal.net
Subject: IDR response

August 4, 2011

Ray W. Hartz, Jr.
839 Leavenworth Street, Apt. 304
San Francisco, CA 94109-6131
Via email: rwhartzjr@sbcglobal.net

Re: Immediate Disclosure Request

Dear Mr. Hartz:

I am writing in response to your immediate disclosure request hand delivered at the Library Commission meeting on Thursday, July 21, 2011. On July 25, 2011 we responded and provided you with several documents: two PowerPoint presentations given by the Friends to the Library Commission on March 5, 2009 and February 3, 2011 and the Public-Private Support and Cooperation Framework for Branch Library Improvement Program and Neighborhood Library Campaign. We also asked for a 14 day extension to allow us time to identify additional documents, which would be responsive to your request.

In your request you ask for assistance in accordance with Sunshine Ordinance Sec. 67.21 in identifying "documents regarding the financial relationship of the San Francisco Public Library (SFPL) with the Friends (Friends) of the San Francisco Public Library. Specifically the amounts raised by the Friends during the fiscal years 2008 to 2009 and 2009 to 2010 and the amounts received by the SFPL from the Friends during those same periods. The figures relating to receipts by the SFPL should contain enough information to ascertain the exact value, either in cash or in kind of all monies and/or materials actually received by the library during the two fiscal years indicated."

You followed up with another Immediate Disclosure Request on July 28, 2011 requesting the "independently prepared audits" for fiscal years 2008-09 and 2009-10." We responded to your request on July 29, 2011 with the documents you requested.

The Library has conducted a diligent search and has identified four additional documents which may be responsive to your request. These documents are the Friends Grant Funding Report; Check Voucher Register; Temporary Restricted Fund Balance and Traditionally Funded Grants.

If you have further questions about this matter, please feel free to contact me.

Sincerely,

Sue Blackman
Library Commission Secretary/ Custodian of Records

San Francisco Public Library
100 Larkin Street

San Francisco, CA 94102-4733
415.557.4233





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: February 1, 2013

To: Phil Ginsberg, Respondent
George Wooding, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE – Hearing – Ethics Complaint 15-111205**

Enclosed is the Report and Recommendation for the above complaint. Phil Ginsberg is the named Respondent. George Wooding is the named Complainant.

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter will be heard under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"). Staff has scheduled this matter to be heard during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013**, in Room 400 in City Hall.

Neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

Under Chapter Three of the Regulations, the Executive Director shall prepare a written Report and Recommendation summarizing his or her factual and legal findings. Each Complainant and Respondent may submit a written response to the Director's Report and Recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing, or no later than Friday, February 15, 2013. The Complainant or Respondent must deliver eight copies of the response to the Executive Director.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this notice, as well as a copy of the Regulations.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

AMIEENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: February 1, 2013

To: Members, Ethics Commission

Cc: Phil Ginsburg, General Manager of the San Francisco Recreation and Parks Department
George Wooding
Members, Sunshine Ordinance Task Force

From: John St. Croix, Executive Director

Re: **REPORT AND RECOMMENDATION
ETHICS COMMISSION COMPLAINT NO. 15-111205**

INTRODUCTION AND JURISDICTION

On December 5, 2011, the Ethics Commission received a referral from the Sunshine Ordinance Task Force ("Task Force") regarding Task Force complaint number 11049. The written referral stated: "The [Task Force] hereby provides notification of willful failure and official misconduct findings against Phil Ginsburg and Sarah Ballard of the San Francisco Recreation and Parks Department for failure to comply with the Order of Determination ("Order") issued on August 8, 2011." The written referral also stated: "the Task Force hereby refers Mark Buell, President of the Recreation and Parks Commission, and Olive Gong of the Recreation and Parks Department ("RPD") for failure to comply with the Order." Specifically, all four Respondents were found to have violated section Ordinance section 67.25 for "failure to respond to the Immediate Disclosure Request before the end of the next business

day,” section 67.26 for “not keeping withholding to a minimum,” section 67.27 for “failure to justify the withholding of records, and 67.21(c) for “not assisting the requestor.” The Task Force also ordered the release of the requested records.

The referral was made pursuant to San Francisco Sunshine Ordinance (“Ordinance”) section 67.34 as to Phil Ginsburg and Sarah Ballard, and pursuant to section 67.30(c) as to Mark Buell and Olive Gong. Ordinance section 67.34 provides that complaints involving allegations of willful violations of the Ordinance shall be handled by the Ethics Commission (“Commission”). Enforcement of section 67.34 is applicable only to elected officials and department heads.

Complaints alleging a willful violation of the Ordinance by elected officials or department heads are handled pursuant to the Commission’s Regulations for Violations of the Sunshine Ordinance (“Regulations”), Chapter Three. Under Chapter Three of the Regulations, the Executive Director must prepare a written report and recommendation summarizing his or her factual and legal findings, applicable legal provisions, and evidence gathered. The report and recommendation must also recommend whether or not a Respondent willfully violated the Ordinance, non-willfully violated the Ordinance, or did not violate the Ordinance. The Commission is not bound by the Executive Director’s recommendation.

Because Mark Buell (an appointed Commissioner), Olive Gong (a department staff member), and Sarah Ballard (a department staff member) are not elected officials or department heads and not subject to section 67.34, the matter as to those Respondents has been bifurcated and will be handled under Chapter Two of the Regulations. Accordingly, this Report and Recommendation relates only to San Francisco Recreation and Parks General Manager, Phil Ginsburg.

SUMMARY OF FACTUAL FINDINGS

On June 3, 2011, George Wooding made an Immediate Disclosure Request ("IDR") to Olive Gong requesting all emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program regarding Golden Gate Park held on May 11, 2011.¹ Mr. Wooding limited the request to correspondence between, to, and/or from Sarah Ballard, Mark Buell, Phil Ginsburg, Elton Pon, Staci White, and Commonwealth Club staff, program directors, and volunteers. The request was also limited to the time period from April 15, 2011 through May 30, 2011. Ms. Gong forwarded the request to Ms. Ballard, Mr. Ginsburg, Mr. Pon, Ms. White, and Margaret McArthur, the Recreation and Parks Commission Secretary. Ms. Gong did not receive responses from the various individuals until June 6, 2011. The individuals informed Ms. Gong that they had no responsive documents. On June 8, 2011, Ms. Gong responded to Mr. Wooding stating that there were no documents responsive to his request.

On June 9, 2011, Mr. Wooding wrote to Ms. Gong asserting that the department's response that there were no responsive records was inadequate, and requested that she identify the staff members who searched for his requested records and the documents that were reviewed in their search. He also requested that if documents existed that were not in the department's possession, that Ms. Gong direct him to the proper office. On June 9, 2011, Ms. Gong responded, stating that the department had no responsive documents to either his June 3 or June 9 requests.

On June 10, 2011, Mr. Wooding made a subsequent IDR. He stated that he was making the IDR to find out the process RPD followed to determine that there were no documents responsive to his June 3 and June 9 requests. He stated that he wanted information on who was

¹ The Commonwealth Club is a private entity, and the Golden Gate program was not a City sponsored event.

asked to look for documents, what they were asked to search, and the response from each person who was asked to search for documents.

On June 20, 2011, Ms. Gong responded to Mr. Wooding, re-stating that the department did not have documents responsive to his initial request. She provided to him emails from RPD staff indicating that she had asked RPD staff to search for the requested documents, as well as their various responses after they searched for the records.

On June 22, 2011, Mr. Wooding filed a complaint with the Task Force naming Ms. Gong as the Respondent and alleging violations of Sunshine Ordinance sections 67.24 and 67.26. On July 5, 2011, Mr. Wooding submitted a second complaint alleging the same violations but named Phil Ginsburg, Mark Buell, and Sarah Ballard as Respondents, in addition to Ms. Gong.

On July 26, 2011, the Task Force held a hearing regarding the complaint. Ms. Gong represented the department. Mr. Wooding stated that in addition to the written responses he received, he also had several phone conversations with Ms. Gong in which she continued to state that RPD had no responsive records. Mr. Wooding then directed the Task Force to several exhibits he included in his complaint that he obtained from an unnamed third party. The first exhibit was an email from Sarah Ballard's City email account to a Ross Lawley of the Commonwealth Club, dated April 20, 2011. The email discussed RPD's concerns with the panel that the Commonwealth Club had assembled to discuss Golden Gate Park. The second exhibit was another email from Ms. Ballard's City email account to a Commonwealth Club member, Kerry Curtis, dated April 20, 2011, again regarding the Golden Gate Park discussion. The third exhibit was an email from Mark Buell's personal AOL account to Commonwealth Club member Greg Dalton, dated April 25, 2011, regarding the Golden Gate Park discussion. The fourth exhibit was an email message from Kerry Curtis to Mr. Buell's personal AOL account, dated

April 26, 2011, in which Phil Ginsburg was copied to his personal sbeglobal email account. Lastly, the fifth exhibit was a message from a Susan Hirsh's personal email account to a Jim Chappell's personal email account, dated May 3, 2011, regarding the Golden Gate Park discussion. Neither Ms. Hirsch nor Mr. Chappell were City officials at that time.

Mr. Wooding stated that the exhibits he presented demonstrated that the department did have responsive records to his request. He requested that the Task Force order the department to do another search for the records he requested. Ms. Gong stated that she asked department staff to provide to her responsive documents so that she may respond to Mr. Wooding. She stated to the Task Force that she was informed by RPD staff that there were no responsive documents and she relayed that information to Mr. Wooding. She stated that although Mr. Wooding provided email messages from Ms. Ballard's City account, those messages are classified as "Category 4" records, meaning that they do not need to be retained under the department's record retention policy. She stated that when RPD staff responded to the request, the messages had already been deleted.

The Task Force made a motion finding that Mark Buell, Phil Ginsburg, Sarah Ballard, and Olive Gong violated Sunshine Ordinance section 67.25 for failure to timely respond to an IDR, section 67.26 for not keeping withholding to a minimum, section 67.27 for failing to justify the withholding of records, and 67.21(c) for failing to assist the requestor by not directing Mr. Wooding to the Commonwealth Club to obtain the records. The Task Force issued a written order on August 8, 2011, which reflected the motion and also ordered the release of the requested records within five business days, as well as the department's appearance at the Task Force Compliance and Amendments Committee ("CAC") meeting on September 13, 2011.

The matter was not heard at the CAC on September 13, 2011. On October 11, 2011, the CAC met to monitor compliance with the Order. Ms. Gong attended that meeting. She stated that the department requested that the correspondence that was deleted be restored and that she was working with the Department of Technology ("DT") to get that done. The CAC referred the matter back to the full Task Force with a recommendation that the matter be sent to the Ethics Commission.

On October 25, 2011, the Task Force met and Mr. Wooding stated that he received the documents that had been restored and that they are responsive to his request, but he remained unsure whether he received all responsive documents. Ms. Gong also attended and stated that RPD requested back up files from DT as directed by the Task Force. She stated that the records requested by Mr. Wooding were not withheld, but were deleted prior to Mr. Wooding's request pursuant to the department's retention policy. She also stated to the Task Force that several of the records were not retained within the SFGOV email system. Thus, when the department searched the City email system for the records, the messages on personal accounts did not show up in that search. She stated that the restored records were provided to Mr. Wooding on October 21, 2011.

SUMMARY OF APPLICABLE LAW

Section 67.21(c) provides, in pertinent part, that a custodian of a public record, when not in possession of the record requested, shall assist a requester in directing him or her to the proper office or staff person. Section 67.25 provides, in pertinent part, when the words "Immediate Disclosure Request" are placed in a subject line of a public records request, the response must be delivered by the end of the next business day. Further, it provides that if the request is voluminous, the department may evoke a 10 day extension. Section 67.26 provides, in pertinent

part, that no record shall be withheld in its entirety unless all information contained in it is exempt from disclosure. Section 67.27 provides, in pertinent part, that any withholding of a public record must be based on an allowable exemption. Section 67.34 provides, in pertinent part, that the willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct.

SUMMARY OF EVIDENCE GATHERED

Staff reviewed the audio recordings for the Task Force meetings regarding this matter and the documents provided to the Task Force related to this matter (Appendix A). Staff interviewed Ms. Gong, Mr. Ginsburg, Ms. Ballard, and Mr. Buell. Staff also interviewed Mr. Wooding, who called the Ethics Commission prior to it receiving the referral. Ms. Gong stated to staff that upon receiving the records request, she forwarded the request to the appropriate RPD staff (Exhibit 1). She also stated that DT restored the deleted messages as ordered by the Task Force (Exhibit 3). Mr. Ginsburg stated to staff that he searched his SFGOV email account and did not find any responsive documents. He also stated that he searched his private account, but had already deleted the message on which he had only been copied; thus, at the time of the request he had no responsive documents in that account. Mr. Buell stated that the RPD Commission Secretary was noticed of the request and searched for responsive documents within the RPD Commission's general email account, and did not think to ask Mr. Buell to search his personal email account for responsive documents. Ms. Ballard stated to staff that it is her common practice to delete emails daily that fell under category four (Exhibit 2). She stated that she believed that the messages at issue fell under category four because they did not require any follow-up. She stated that she had already deleted the email messages from her City email

account when asked to search for responsive documents, and that is why she responded to Ms. Gong stating she had no responsive documents.

LEGAL FINDINGS

A. Mr. Ginsburg did not violate section 67.25.

Ordinance section 67.25 provides that if a public records request is noticed as an "Immediate Disclosure Request," the department must satisfy the request no later than the close of business on the following day of the request. Mr. Wooding made his first request on June 3, 2011, and the department did not respond until June 8, 2011. June 3, 2011, was a Friday; thus, the department had until the close of business on Monday, June 6, 2011, to respond. The department did not invoke an extension or provide the requested documents by the deadline. Therefore, the department failed to timely respond to the request. However, staff does not conclude that the violation was willful or attributable to Mr. Ginsburg.

In order for a violation to be "willful" as defined in the Regulations, a Respondent must have acted or failed to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance. The document request was directed to the department through Ms. Gong who forwarded the request to RPD staff on the same day it was sent by Mr. Wooding. Mr. Ginsburg informed Ms. Gong, through Staci White, on June 6, 2011, at 11:35 AM, that he had no responsive documents. Although Ms. Gong did not deliver the department's response as required, Mr. Ginsburg timely responded to Ms. Gong and made a good faith effort to timely respond to the requester as required by the Ordinance.

B. There is no violation of Ordinance section 67.26 because it is inapplicable.

Section 67.26 provides that no document may be withheld in its entirety unless all information contained in it is exempt from disclosure. In this matter, the department did not

assert that it was withholding documents; it asserted that there were no responsive records. The issue of whether or not the documents were properly deleted is separate from the requirements outlined in section 67.26, which addresses the withholding of exempt documents. Thus, staff does not agree with the Task Force finding that the Mr. Ginsburg violated section 67.26.

C. There is no violation of section 67.27 because it is inapplicable.

Sunshine Ordinance section 67.27 requires that a department justify withholding a record based on a specific exemption provided for in the Sunshine Ordinance, Public Records Act, or elsewhere. As noted above, the department did not assert that it was withholding any documents based on an exemption. Thus, staff does not agree with the finding that Mr. Ginsburg violated section 67.27.

D. There is no violation of section 67.21(c) because the Commonwealth Club is not a City office.

Section 67.21(c) provides, in pertinent part, that a “custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.” The Task Force based this violation on Ms. Gong’s failure to direct Mr. Wooding to the Commonwealth Club to obtain the documents he requested. The Ordinance is silent as to whether a custodian of records is required to direct a requester to a private entity where it refers to “office or staff person.”

Although silent, the purpose of the Sunshine Ordinance is to protect the public’s access to the workings of government. (See S.F. Admin. Code § 67.1(c).) Further, the various provisions of the Ordinance refer to the public’s access to government records or meetings. Thus, the likely intent of the 67.21(c) reference to “office or staff person” was to mean a City office or City employee. The City Attorney also has interpreted the reference in section 67.21(c) to mean

another City department. (See S.F. Good Govt. Guide, Part 3, § II(F)(1), p. 82 [stating that if a requester has addressed a request to the wrong department, the department that received the request should inform the requester of the other department(s) that may have responsive records]). Staff does not agree that Ms. Gong was *required* by the Sunshine Ordinance to direct Mr. Wooding to the Commonwealth Club. Thus, staff finds that there is no violation of section 67.21(c).

RECOMMENDATION

Based on the above reasons staff recommends that the Commission find that Mr. Ginsburg did not violate Sunshine Ordinance sections 67.25, 67.26, 67.27, or 67.21(c).

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SAN FRANCISCO
ETHICS COMMISSION



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

BY _____

Chairperson Hur and Honorable Commissioners
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

Re: Hearing – Ethics Complaint 15-111205

February 15, 2013

Dear Chairperson Hur and Honorable Commissioners:

We write on behalf of Respondent Phil Ginsburg, General Manager of the Recreation and Park Department, with regard to the above-referenced matter. For the reasons set forth below, the Ethics Commission should adopt the recommendation set forth in the Executive Director's February 1, 2013 Report and Recommendation, and find that there was no willful violation of the Sunshine Ordinance on the part of Mr. Ginsburg. Indeed, Mr. Ginsburg committed no violation of the Ordinance, "willful" or otherwise.

In December 2011, the Sunshine Ordinance Task Force ("Task Force") notified the Ethics Commission of "willful failure and official misconduct findings" against Mr. Ginsburg for failing to comply with its August 8, 2011 Order of Determination in the matter of George Wooding v. Recreation and Park Department, Sunshine Complaint No. 11049. In that Order, the Task Force found that Mr. Ginsburg, along with two Recreation and Park Department ("RPD") staffers and the Recreation and Park Commission President,¹ had violated the following sections of the Sunshine Ordinance: (1) Section 67.25 "for failure to respond to the Immediate Disclosure Request before the end of the next business day," (2) Section 67.26 "for not keeping withholding to a minimum," (3) Section 67.27 "for failure to justify the withholding of records," and (4) Section 67.21(c) "for not assisting the requestor." As explained below, there is no factual or legal basis for concluding that Mr. Ginsburg willfully violated any of these provisions.

¹ The Task Force's December 2011 referral to the Ethics Commission also included Mark Buell, President of the Recreation and Park Commission, and RPD staffers Sarah Ballard and Olive Gong. As explained in the Executive Director's February 1, 2013 Report and Recommendation, this matter as to Mr. Buell, Ms. Gong and Ms. Ballard has been bifurcated and will be addressed under Chapter Two of the Commission's Regulations for Violations at a Show Cause Hearing scheduled for February 25, 2013. RPD will submit a separate response with regard to Mr. Buell, Ms. Gong and Ms. Ballard five days before the Show Cause Hearing, in accordance with Chapter 2, Section II, C(2) of the Regulations.

FACTUAL BACKGROUND

A. June 3, 2011 Immediate Disclosure Request

On Friday June 3, 2011, Mr. Wooding, the Complainant in this matter, submitted an "immediate disclosure request" to Olive Gong, custodian of records for RPD. Because the request was submitted on a Friday, the Department's response was due the next business day, Monday June 6, 2011. The request asked for correspondence related to a May 11, 2011 Commonwealth Club forum between, to, and/or from five individuals (Mr. Ginsburg, Recreation and Park Commission President Mark Buell, RPD staffer Sarah Ballard, and two other RPD employees) and representatives of the Commonwealth Club.

Upon receipt of the request, Ms. Gong forwarded the request to Mr. Ginsburg, as well as the other persons named in the request. Mr. Ginsburg promptly searched both his office email (SFGOV) account, as well as his personal email account, and did not locate responsive records in either account. At the time he conducted the search, he had already deleted any emails that may have been responsive to the request in accordance with the Department's Record Retention and Destruction Policy. These deletions occurred before Mr. Ginsburg or RPD had received or knew of the request. On Monday June 6, Mr. Ginsburg informed Ms. Gong that he did not have any records responsive to the request. The other RPD staffers similarly responded that they did not have responsive records. On Wednesday June 8, Ms. Gong responded to Mr. Wooding by email stating that the Department did not have any records responsive to his request. Ms. Gong was two days late in responding because she had been waiting for another RPD staffer to inform her whether he had responsive records.

B. Mr. Wooding's June 9 and June 10 Follow-Up Emails

On June 9, 2011, Mr. Wooding emailed Ms. Gong stating that her June 8 response was "unclear" and asking her to "identify the staff who searched and what specific documents were reviewed in their search."² That same day, Ms. Gong responded again stating that she did not have any responsive records.

The next day, June 10, 2011, Mr. Wooding emailed Ms. Gong an "immediate request to find out how the RPD decided (process) that there were no documents that would adequately respond to my sunshine requests." He asked for the names of all people asked, the question asked, and the response from each person, including "verbal as well as written communications."³ Ms. Gong spoke with Mr. Wooding by phone and told him there were no responsive records. On July 20,

² We note that to the extent Mr. Wooding's June 9th request asked RPD to answer questions and/or generate a list of names, it amounted to an interrogatory, not a request for public records. "A request that a department create a response to a request for information or answer a series of questions is not a public records request, and neither the Public Records Act nor the Sunshine Ordinance requires a department to reply to a series of written questions or interrogatories." (City Attorney's Good Government Guide, 2010-11 edition, at p. 81.)

³ We note that Mr. Wooding's request for "verbal communications" was also beyond the scope of the Public Records Act and Sunshine Ordinance, which apply only to "public records," which is defined as a "writing." (Govt. Code § 6252(c).)

2011, Ms. Gong provided Mr. Wooding with copies of emails she had sent RPD staff asking if they had responsive records, and their responses that they did not.

C. Sunshine Ordinance Task Force Proceedings

On June 22, 2011, Mr. Wooding filed his complaint with the Task Force. On July 19, 2011, Mr. Wooding submitted to the Task Force five emails that he had obtained from an un-named, non-City third party (presumably someone connected with the Commonwealth Club): (1) an April 20, 2011 email from RPD staffer Sarah Ballard's office email account to a Ross Lawley of the Commonwealth Club, (2) an April 20, 2011 email from Ms. Ballard's office email account to a Kerry Curtis of the Commonwealth Club, (3) an April 25, 2011 email from Recreation and Park Commission President Mark Buell's personal email account to a Greg Dalton of the Commonwealth Club, and (4) an April 26, 2011 email from Kerry Curtis to Mark Buell's personal email account, in which Mr. Ginsburg was copied as a "cc" to his personal email account, plus a fifth document between two persons, neither of whom were City officials or employees at the time (a May 3, 2011 email between a Susan Hirsch and Jim Chappell).

In a July 25, 2011 letter to the Task Force, Ms. Gong explained that at the time Mr. Wooding submitted his June 3 public records request, the emails Mr. Wooding had obtained from a non-City source had already been deleted by RPD personnel in accordance with the Department's Record Retention and Destruction Policy, a copy of which is attached hereto as **Exhibit A**. As Ms. Gong explained, the emails fell under "Category 4" of the Department's Policy, a category of records that the Department is not required to retain. Specifically, the emails constituted "correspondence not requiring follow-up," which the Policy designates as "Category 4" records. (See Exhibit A.)

On July 26, 2011, the Task Force heard the matter. Notwithstanding Ms. Gong's explanation that the Department did not have any responsive records at the time of Mr. Wooding's request, and that any potentially responsive records had already been deleted at the time of his request in accordance with the Department's Record Retention and Destruction Policy, the Task Force issued an Order of Determination on August 8, 2011 finding that the requested records "are not appropriately included under Category 4" of the Department's Policy and that RPD "should have kept the emails." Specifically, the Order found Mr. Ginsburg, Ms. Gong, Ms. Ballard and Mr. Buell had violated the following sections of the Sunshine Ordinance: (1) Section 67.25 "for failure to respond to the Immediate Disclosure Request before the end of the next business day," (2) Section 67.26 "for not keeping withholding to a minimum," (3) Section 67.27 "for failure to justify the withholding of records," and (4) Section 67.21(c) "for not assisting the requestor."

LEGAL ISSUES

The Task Force referred this matter to the Ethics Commission with a finding of "willful failure and official misconduct" on the part of Mr. Ginsburg pursuant to Sunshine Ordinance Section 67.34. Because the complaint alleges a willful violation against a department head, the Commission reviews this matter under Chapter 3 of the Commission's newly adopted Regulations for Violations of the Sunshine Ordinance. Under those Regulations, a "willful violation" is defined as "an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance." (Chapter 1, Section II(U).) To find a violation

of the Ordinance, the Commission must conclude the Respondent committed a violation "based on a preponderance of the evidence." (Chapter 3, Section III(B).) As the Executive Director's February 1, 2013 Report and Recommendation correctly concludes, there is no factual or legal basis to conclude that Mr. Ginsburg's committed a "willful violation" of any of the four Sunshine Ordinance provisions cited in the Task Force's Order of Determination.

A. Mr. Ginsburg Did Not Violate Section 67.25

The Task Force Order of Determination found Mr. Ginsburg in violation of Section 67.25 of the Sunshine Ordinance "for failure to respond to the Immediate Disclosure Request before the end of the next business day." That section provides that an Immediate Disclosure Request must be responded to "no later than the close of business on the day following the day of the request." (S.F. Admin. Code § 67.25.)

Because Mr. Wooding submitted his request on Friday June 3, 2011, the Department's response was due on Monday June 6, 2011. As the Executive Director's Report and Recommendation observes, on Monday June 6, Mr. Ginsburg timely informed Ms. Gong that he had no records responsive to Mr. Wooding's request. Although Ms. Gong did not send the Department's response to Mr. Wooding that same day, Mr. Ginsburg "made a good faith effort to timely respond to the requester as required by the Ordinance." (Director's Report, p. 8). While RPD as an entity was two days late in responding to the request, Mr. Ginsburg actually moved quickly in reviewing his records to determine he had no responsive records. How his quick and conscientious review of his own records violates the Ordinance is a mystery. How his non-violation then escalates to become "willful" is even more of a mystery. There is simply no basis to conclude that Mr. Ginsburg's conduct constitutes a "willful violation" of Section 67.25.

B. Section 67.26 Does Not Apply Here

The Task Force Order of Determination also found that Mr. Ginsburg violated Section 67.26 of the Sunshine Ordinance "for not keeping withholding to a minimum." That section provides that a record shall not "be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute." (S.F. Admin. Code § 67.26.) As previously noted, Mr. Ginsburg did not withhold records in his possession. Rather, he had no responsive records. Thus, Section 67.26's limitations as to withholding and redacting records are simply inapplicable here and there is no basis to find a violation of this provision. The text makes clear that Section 67.26 is concerned with redactions in records:

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article. This work shall be done personally by the attorney or other staff member conducting the exemption review....

(S.F. Admin. Code § 67.26.) If the Task Force is suggesting that Section 67.26 applies when a document is destroyed pursuant to a department's records retention and destruction schedule, that interpretation is an obvious and gross distortion of the text of Section 67.26.

C. Section 67.27 Also Does Not Apply Here

The Task Force Order of Determination also found that Mr. Ginsburg violated Section 67.27 of the Sunshine Ordinance “for failure to justify the withholding of records.” That section states that “withholding of information” must be justified in writing with citation to the specific statutory authority that exempts the requested record(s) from disclosure. Again, as with Section 67.26 discussed above, Section 67.27’s requirements are inapplicable here and there is no basis to find a violation of this provision. Section 67.27 states in relevant part:

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(S.F. Admin. Code § 67.27.) By no twisting of the English language could Section 67.27 conceivably apply.

D. Mr. Ginsburg Did Not Willfully Violate Section 67.21(c)

Finally, the Task Force Order of Determination found that Mr. Ginsburg violated Section 67.21(c) of the Sunshine Ordinance “for not assisting the requestor.” Specifically, the Task Force Order stated that RPD “should have told the requestor that copies could be available at the Commonwealth Club.”

Section 67.21(c) provides, in relevant part, that a custodian of records “when not in possession of the record requested, shall assist a requester in directing a request to *the proper office or staff person*.” (S.F. Admin. Code § 67.21(c) [emphasis added].) As the City Attorney’s Good Government Guide explains, Section 67.21(c) requires departments to help requestors by directing them to other *City* departments that may have responsive records:

If a requester has addressed a request to the wrong department, or if the department that received the request knows that another department may have responsive records, the department that received the request typically should inform the requester of *the other department(s)* that may have responsive records. Admin. Code § 67.21(c).

(Good Government Guide, 2010-11 edition, p. 82 [emphasis added].) The only reasonable interpretation of the phrase “proper office or staff person” in Section 67.21(c) is that it means *City* offices and *City* staff. With narrow exceptions not applicable here, private sector entities have no legal obligation to provide records to members of the public. Hence, by definition, a private sector entity is not a “proper” office or staff person within the meaning of the Ordinance. To our knowledge, this is the first time in the history of the Public Records Act or the Sunshine Ordinance that someone has read into the law a legal obligation to direct a requester to a non-public entity with no legal obligation to respond to a request. It would make no sense to require City departments to refer requestors to private entities like the Commonwealth Club given that such entities are under no legal obligation to disclose their records. Hence, there is no basis for finding that Mr. Ginsburg violated this provision.

And, as with the Task Force’s creative interpretations of Sections 67.26 and 67.27, its creative interpretation of Section 67.21(c) here is so far off the mark that neither Mr. Ginsburg nor any other reasonable person could be expected to understand that such an interpretation is “the law” (which it is not). Thus, even assuming a violation of one of these sections (and there has been no such violation), the requirement of “willfulness” as defined by the Commission’s Regulations – “an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance” – is wholly absent here.

For the foregoing reasons, the Recreation and Park Department, on behalf of its General Manager, Mr. Ginsburg, respectfully requests that the Ethics Commission find that Mr. Ginsburg did not violate the Sunshine Ordinance, and dismiss the complaint forthwith.

Sincerely,



Olive Gong, RPD Custodian of Records

Attachments: Exhibit A (RPD Record Retention and Destruction Policy)

cc: George Wooding, Complainant

RECREATION AND PARK DEPARTMENT

Record Retention and Destruction Policy

The Recreation and Park Department Record Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule.

This policy covers all records and documents, regardless of physical form or characteristics, which have been made or received by the Recreation and Park Department in connection with the transaction of public business.

PART I: POLICY AND PROCEDURES

A. RETENTION POLICY

The Recreation and Park Department shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part II. The records of the Recreation and Park Department shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- **Permanent records.** Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed and special measures are followed. Under Administrative Code Section 8.4, once microfilmed, or may be placed on an optical imagery system, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of this Department. An example of permanent records includes but is not limited to official records of commission action.
- **Essential records.** Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Administrative Code Section 8.9. An example of essential records includes, but is not limited to, the Department Employee Handbook.

Category 2: Current Records. Current records are records which for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Examples of current records include lease files and personnel files. Current records shall be retained as follows:

- **Where retention period specified by law.** Where federal, state, or local law prescribes a definite period of time for retaining certain records, the Recreation and Park Department will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are Family Medical Leave Act Records and Workers' Compensation Records.
- **Where no retention period specified by law.** Where no specific retention period is specified by law, the department must specify the retention period for those records that the department is required to retain. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period. Examples of current records include but are not limited to invoices for purchases of supplies and budget documents.

Category 3: Storage Records. Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records.

Category 4: No Retention Required. Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include materials and documents generated for the convenience of the person generating them, draft documents (other than draft of agreements subject to disclosure pursuant to Administrative Code Section 67.24(a)) which have been superseded by subsequent versions, or rendered moot by departmental action, and duplicate copies of records that are no longer needed. Specific examples include calendars, telephone message slips, miscellaneous correspondence not requiring follow-up or departmental action, notepads, e-mails that do not contain information required to be retained under this policy, and chronological files. With limited exceptions, no specific retention requirements are assigned to documents within this category. Instead, it is up to the originator or recipient to determine when the documents business utility has ended.

B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for the periods prescribed for substantially similar records. Current or storage records may be destroyed five years after they were created if they have served their purpose and are no

longer required for any public business or public purpose, and destruction of the record has been approved by the Controller (for records pertaining to financial matters), the City Attorney (for records have legal significance) and the Retirement Board (for payroll checks, time cards and relate documents).

C. STORAGE OF RECORDS

Records may be stored in the Recreation and Park Department's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Recreation and Park Department's office space or equipment include active chronological files, research and reference files, legislative drafting files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the Recreation and Park Department's office space or equipment, may be sent to the City's off-site storage facility or maintained in the Department's storage facility.

D. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Recreation and Park Department but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

PART II
RECORD RETENTION AND DESTRUCTION SCHEDULE

TYPE OF RECORD	RETENTION CATEGORY [e.g., current, permanent]	RETENTION PERIOD			REMARKS/ DISPOSITION INSTRUCTION OR TRIGGER
		Total	Current *	Storage **	
GENERAL AND ADMINISTRATIVE RECORDS					
	Administrative records, miscellaneous	2	X		
	Advice Letters	2	X		
Annual Reports		Later of 2 years or until superseded			
Audio/Video recordings not specified	1	Permanent	3 years	After 3 years	
Audit Reports	2	2 years	X		
Budget Files	1	Permanent	3 years	After 3 years	
Calendars (other than department head)	2	2 years	X		
Calendar (department head)	4	None	X		
Chronological Files	4	2 years	X		
Claims Files	4	None			
Code Interpretations	2	Later of 2 years or until claim is disposed.	X		
Correspondence, miscellaneous	2	Later of 2 years or until superseded	X		
* files located in house		2 years	X		
** files located in storage in house or off site					

Correspondence not requiring follow-up	4	None			
Correspondence, draft	4	None			
Emergency Response Plan	2	Later of 2 years or until superseded	X		
Employee Handbook	1	Until superseded	X		
Fax Transmittal Sheets	4	None			
Financial Records, miscellaneous	4	None	X		
General Manager Reports	2	5 years	X		
Incident Reports	4	None			
Journals/Magazines/Catalogs	2	Until superseded	X		
Legal Advice	4	None			
Legislative Drafts	4	None			
Memoranda, miscellaneous	2	5 years or until superseded	X		
Memoranda, policy/decisional	2	Later of 2 years after applicable	X		
Payables (Invoices)	2	fiscal year	X		
Publications, reports created by department	2	For life of permit, minimum of 2 years	Located at Log Cabin — permits and reservations office		
Permit Application and Issuance Records	2	3 years	X		
Revolving Funds Records	1	Permanent	For 3 years	After 3 years	
Settlement Agreements	2	2 years	X		
Telephone Logs	2	Later of 2 years after applicable	X		
Work Orders and Payments	2	fiscal year 2 years	X		

COMMISSION RECORDS						
Agendas, Notices and Minutes of Commission Meetings	1	Permanent	X			
Audio/Video recording of meetings of policy bodies	1	Permanent			After 2 years	Required by Admin. Code §67.14
Commission Correspondence	2	2 years	X			
Commission Files	2	10 years	X			
Motions and Resolutions	1	Permanent	X			
CONTRACT/GRANT RECORDS						
Bond Documents	2	Duration of Bond	X			
Contracts/Agreements/MOUs	2	2 years after life of agreement ¹	X			
Contract correspondence	2	2 years after life of the agreement	X			
Construction Plans	2	Later of 2 years or until superceded	X			Admin. Code §67.24(a)
Exchanged Drafts of Agreements	2	2 years	X			
Lease Files	2	3 years after expiration	X			
Professional Services Contracts	2	2 years after life of agreement	X			
Purchase Orders	2	2 years	X			
Regulations	1	Current until superceded	X			
Requests for Proposals (RFPs) and Request for Qualifications (RFQs);	2	2 years	X			Admin. Code §67.24(e)

¹ Unless longer retention period required by state or federal law, in which case the type of agreement and applicable retention period should be listed.

Responses to RFPs and RFOs					
RFP Scoring Records	2	2 years	X		
PERSONNEL/HR RECORDS					
ADA Request for Reasonable Accommodation Report	2	5 years	X		
Affirmative Action Plan	2	5 years	X		
Discrimination Complaints	2	5 years	X		
Employee Accident/Incident Reports	2	7 years	X		Title 8, Cal. Code of Regulations, Section 10102
Employment Applications/Resumes	2	2 years	X		
Ergonomic Records	2	2 years	X		Required by Fair Labor Standards Act §11(c)
Family Medical Leave Act Records	2	5 years	X		
Payroll Records	2	5 years	X		
Personnel Files	2	5 years after date of separation	X		
Sexual Harassment Complaints	2	5 years	X		
Time Rosters*	2	5 years	X		
Time Sheets	2	5 years	X		29 CFR 1904.6
Workers' Compensation Records	2	5 years	X		

*These are no longer generated. Prior records will be retained for 5 years.



February 14, 2013

To: Ethics Commission members: Beverly Hayon, Benedict Y. Hur, Esq., Dorothy S. Liu, Esq., Paul A. Renne, Esq., Jamiennne S. Studley, Esq.

From: George Wooding

Re: Ethics Commission Complaint 15-111205. Recommendation, For Phil Ginsburg

This is a case about about the RPD, A public agency, abusing the first amendment free speech rights of private citizens and then trying to hide their subterfuge by deliberately deleting all public records relating the RPD's sabotage of a public forum.

Case Overview. The RPD was unhappy that citizens with differing points of view than the RPD's official policy were going to speak at the Commonwealth Club. Ginsburg & Buell were clearly unhappy with this meeting and decided to "unofficially" add Buell as a speaker, change the meeting topic and add Buell to the panel. Ginsburg working in concert with Susan Hirsh, a City Fields lobbyist & Sarah Ballard, a Ginsburg sycophant, changed the meeting by deliberately disparaging the existing citizen panel, influence peddling and coercion. After the Commonwealth meeting, I received some of the RPD's emails through a private source and then filed a document records request. The RPD stated that none of the requested documents existed. After the Commonwealth documents were submitted, the RPD then took a position that they could decide which emails should be deleted. This important free speech case is about 1) the abuse of citizen's free speech by a public agency directed by Phil Ginsburg, 2) the deletion of relevant documents and 3) a cover-up of the RPD's predatory behavior.

QUESTIONS THAT THE RPD NEEDS TO ANSWER

-was Ginsburg acting consistently with the RPD's record retention policy? A policy which required the RPD to retain records for a minimum of two years. Both Buell and Ginsburg had signed a Sunshine Ordinance Document on April 1, 2011.

-Were RPD documents deleted that should have been kept?

-Is the RPD accountable for any of its actions?

-Should Ginsburg, the RPC and sympathetic lobbyist Susan Hirsh be allowed to continue to conspire against citizens free speech rights.

ORDER OF DETERMINATION

August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING V RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club

representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

11049_George Wooding v Recreation and Park Department

1

CITY AND COUNTY OF SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have

additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the

Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe) ☐ Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

11049_George Wooding v Recreation and Park Department

Summary of Evidence Gathered:

There is no evidence that this statement is accurate. Why is Ethic's accepting Ginsburg's word?

Mr. Ginsburg stated to staff that he searched his SFGOV email account and did not find any responsive documents. He also stated that he searched his private account, but had already deleted the message on which he had only been copied; thus, at the time of the request he had no responsive documents in that account. Mr. Buell stated that the RPD

Mr. Ginsburg stated to staff that he searched his SFGOV email account and did not find

any responsive documents. He also stated that he searched his private account, but had already deleted the message on which he had only been copied; thus, at the time of the request he had no responsive documents in that account. Mr. Buell stated that the RPD

Mr. Ginsburg did not violate section 67.25.

Section 67.26 is a complete fabrication. The RPD was withholding documents to cover-up what they had done at the Commonwealth Club meeting

"There is no violation of section 67.27 because it is inapplicable. There is no violation of Ordinance section 67.26 because it is inapplicable. Section 67.26 provides that no document may be withheld in its entirety unless all information contained in it is exempt from disclosure. In this matter, the department did not

Report and Recommendation – Ethics Commission Complaint No: 15-111205

assert that it was withholding documents; it asserted that there were no responsive records. The issue of whether or not the documents were properly deleted is separate from the requirements outlined in section 67.26, which addresses the withholding of exempt documents. Thus, staff does not agree with the Task Force finding that the Mr. Ginsburg violated section 67.26.

Ginsburg hides from all sunshine laws and a compliant Ethics Department finds him—of course---Innocent. Will Ginsberg be found guilty of any violations?

RECOMMENDATION

Based on the above reasons and Ethic's staff recommendations, please find that Buell, Ballard & Gong violate Sunshine Ordinance sections 67.25, 67.26, 67.27, or 67.21(c

For the foregoing reason's, I respectfully request that the Ethics Commission find that Buell, Ballard & Gong violated the Sunshine Ordinance and cite them accordingly.

Sincerely,

George Wooding

SUNSHINE ORDINANCE
TASK FORCE

2011 DEC -5 PM 1:21

SAN FRANCISCO
ETHICS COMMISSION



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

December 5, 2011

BY _____

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Sunshine Complaint No. 11049, George Wooding v. Recreation and Parks
Department
Notice and Referral for Willful Failure and Official Misconduct**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against Phil Ginsburg and Sarah Ballard of the San Francisco Recreation and Parks Department for failure to comply with the Order of Determination ("Order") issued on August 8, 2011 in Sunshine Complaint No. 11049, George Wooding v. Recreation and Parks Department.

This willful failure and official misconduct finding is noticed for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct";
- (2) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (3) San Francisco City Charter Sections C3.699-11(5) and C3.699-13 (c) and (d).

Additionally, the Task Force hereby refers Mark Buell, President of the Recreation and Parks Commission, and Olive Gong of the Recreation and Parks Department for failure to comply with the Order. These referrals are made pursuant to:

- (1) Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts";

- (4) (2) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (5) San Francisco City Charter Sections C3.699-11(5) and C3.699-13 (c) and (d).

Background

George Wooding filed a complaint with the Task Force on June 22, 2011 alleging the Recreation and Parks Department failed to provide records responsive to two document requests, one dated June 3, 2011 and another dated June 10, 2011.

Task Force Hearings on Complaint

On July 26, 2011, the Task Force held a hearing on the complaint. The Task Force found respondents in violation of the Sunshine Ordinance and ordered disclosure of the requested records no later than August 15th. A description of the hearing, violations found, and the Task Force decision are described in the attached Order.

Mr. Wooding subsequently requested respondents review Recreation and Parks Department back up files for the improperly deleted email correspondence. Respondent Olive Gong agreed to accommodate the request, and the matter was continued by the Task Force.

On October 11, 2011, the Task Force's Compliance and Amendments Committee held a hearing to monitor compliance with the Order and agreement to review back up files for responsive records. Ms. Gong had provided Mr. Wooding with nonresponsive department promotional materials she said were discovered in files created by an intern no longer working with the Recreation and Parks Department.

Although the original records request had been submitted four months prior to the Committee hearing, Ms. Gong requested additional time for the technology departments to review back up files. She could not provide a reason the technology departments required additional time.

The Compliance and Amendments Committee referred the matter to the full Task Force regularly scheduled meeting on October 25, 2011 for action on the failure to comply.

On October 21, 2011, two business days before the Task Force was to consider action on the failure to comply with its Order issued on August 8, 2011, respondents finally produced responsive records to Mr. Wooding.

Thank you for your attention to this matter. A copy of the Order is attached. Please contact the Task Force Administrator at soff@sfgov.org or (415) 554-7724 for any additional information

A handwritten signature in cursive script that reads "Hope Johnson".

Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney

SUNSHINE ORDINANCE
TASK FORCE

2011 DEC -5 PM 1:21

SAN FRANCISCO
ETHICS COMMISSION



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

BY _____ August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING v RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe)

Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

Excused: Knee,
Absent: Snyder, Chan, Knoebber

A handwritten signature in cursive script that reads "Hope Johnson".

Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney

Appendix A

Date: July 26, 2011

Item No. 23 & 24

File No. 11049

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

<input checked="" type="checkbox"/>	<u>George Wooding against Recreation and Park</u>
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Completed by: Chris Rustom

Date: July 21, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

**MEMORANDUM
PRIVILEGED AND CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: July 23, 2011
RE: *11049 George Wooding v. Recreation and Parks Department*

COMPLAINT

Complainant George Wooding alleges that the Recreation and Parks Department ("the Department") violated the Ordinance by failing to provide documents responsive to his two public records request, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINANT FILES COMPLAINT:

On June 22, 2011, Complainant filed a complaint against the Department.

JURISDICTION

The Recreation and Parks Department is a charter department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint against the Department.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.20(b) defines "public information".
- Section 67.21 governs responses to a public records request.
- Section 67.25 governs immediacy of response.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6252(e) defines "public record".
- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

- *CSU, Fresno Association, Inc. v. Superior Court (McLatchy)* (2001) 90 Cal.App.4th 810, 824-825 ["The mere custody of a writing by a public agency does not make it a public record, but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty, it is a public record."]

MEMORANDUM
PRIVILEGED & CONFIDENTIAL

TO: Sunshine Ordinance Task Force
DATE: July 23, 2011
PAGE: 2
RE: 11049 George Wooding v. Recreation and Parks Department

- *Coronado Police Officers Association v. Carroll* (2003) 106 Cal.App.4th 1001, 1006 ["mere possession by a public agency of a document does not make the document a public record."]
- *Schill v. Wisconsin Rapids School District* (2010, Wisconsin Supreme Court) 327 Wis.2d 572, 587-588, 632 [private email on government computer is not a "public record" unless it relates to public business, collecting cases from other state courts with the same holding and noting no contrary holdings appear to exist.]
- *Griffis v. Pinal County* (2007, Arizona Supreme Court) 215 Ariz. 1, 11-13 [emails generated on public computer are not automatically public records without substantial nexus with government activities]

ISSUES TO BE DETERMINED

Contested/Uncontested Facts: It appears that the relevant facts are not in dispute. On June 3, 2011, Complainant made an Immediate Disclosure Request ("IDR") for certain documents from the Department related to a presentation at the Commonwealth Club related to Golden Gate Park. On June 8, 2011, Olive Gong responded on behalf of the Department, stating that it had no responsive documents. On June 9, 2011, Complainant emailed Gong and requested further clarification. Gong again responded that day by stating that the Department had no responsive documents.

On June 10, 2011, Complainant made a separate IDR requesting the persons who had been asked to respond to his original IDR, what questions Gong had asked them, and what their responses were. In response, on July 20, 2011, Gong provided emails between herself and Department staff, in which she forwarded Complainant's request and staff members responded that they had no responsive documents.

Complainant also has provided copies of several emails that he alleges demonstrate that the Department's failure to provide documents that are responsive to his first IDR. Some of these emails involve a City email address of a Department employee, while others involve a private email address of a Department employee or commissioner.

While the Department's July 19, 2011 response to the Complaint regarding the original IDR was provided, I received no Department response that addressed the second IDR. The Department response I received also did not address the documents Complainant provided that same day, which he suggest prove the Department did not provide responsive documents in its possession or control.

Complainant specifically requests that the Task Force order the Department to produce emails from the private email accounts of Department staff and commissioners that may be responsive to his IDR.

**MEMORANDUM
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
DATE: July 23, 2011
PAGE: 3
RE: *11049 George Wooding v. Recreation and Parks Department*

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the nature and extent of the search the Department conducted with regard to emails responsive to the IDR?
- Did the Department search email back-ups for responsive documents?
- Did the Department request from relevant staff and commissioners their private emails related to the IDRs?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Are private emails related to City business "public records" under the PRA?
- Are they "public information" under the Sunshine Ordinance?
- If the facts alleged by complainants are true, was there a violation of the state and/or local public records or meetings law?

SUGGESTED ANALYSIS

Under Section 67.20(b) of the Ordinance:

- Determine whether private emails of Department staff or commissioners related to City business constitute "public information" under the Ordinance.

Under Section 67.21 and 67.25 of the Ordinance:

- Determine whether the Department timely responded to each of the two IDRs.

Under Section 67.26 of the Ordinance:

- Determine whether the Department "withheld" emails by failing to provide private emails related to City business, or by failing to conduct an adequate search for government emails.

Under Section 67.27 of the Ordinance:

- Determine whether the Department has adequately justified any withholding.

Under Section 6252(e) of the PRA:

- Determine whether private emails of Department staff or commissioners related to City business constitute "public records" under the PRA.

Under Section 6253 of the PRA:

- Determine whether the Department timely responded to each of the two IDRs.

MEMORANDUM
PRIVILEGED & CONFIDENTIAL

TO: Sunshine Ordinance Task Force
DATE: July 23, 2011
PAGE: 4
RE: *11049 George Wooding v. Recreation and Parks Department*

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

**MEMORANDUM
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
DATE: July 23, 2011
PAGE: 5
RE: *11049 George Wooding v. Recreation and Parks Department*

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED

SEC. 67.20. DEFINITIONS.

Whenever in this article the following words or phrases are used, they shall mean:

- (a) "Department" shall mean a department of the City and County of San Francisco.
- (b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

- (b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.25. IMMEDIACY OF RESPONSE.

- (a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

**MEMORANDUM
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
DATE: July 23, 2011
PAGE: 6
RE: *11049 George Wooding v. Recreation and Parks Department*

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**6252. DEFINITIONS**

As used in this chapter:

- (e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.
- (g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

SECTION 6253

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed

**MEMORANDUM
PRIVILEGED & CONFIDENTIAL**

TO: Sunshine Ordinance Task Force
DATE: July 23, 2011
PAGE: 7
RE: *11049 George Wooding v. Recreation and Parks Department*

in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.



<complaints@sfgov.org>

06/22/2011 02:51 PM

To <sotf@sfgov.org>

cc

bcc

Subject: Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:recreation and park department
& recreation and park commission

CONTACTED:Olive Gong

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:67.24 & 67.26

DESCRIPTION:I requested all communications and documents related to the Commonwealth Club of California presentation (Golden Gate Park under siege) of May 11th, 2011. The date of the document request was April 15th - May 30th, 2011. We requested these documents from specific members of the recreation and Park Department and the Recreation and Park Commission. I have forwarded these requests through a separate email.

HEARING:Yes

PRE-HEARING:No

DATE:June 21, 2011

NAME:George Wooding

ADDRESS: [REDACTED] Dellbrook

CITY:San Francisco, CA 94131

ZIP:94131

PHONE:415 [REDACTED]

CONTACT_EMAIL:[REDACTED]@bigeds.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:Yes



George Wooding
[REDACTED]@bigeds.com>
06/21/2011 05:35 PM

To: chris.rustom@sfgov.org
cc: sotf@sfgov.org
bcc:

Subject: Fwd: Response to your request dated 6/3/2011

Hi Chris,

I was not aware of the Sunshine deadline dates for July until late this afternoon. I requested a sunshine complaint hearing and sent them to you in two separate formats. I wanted to make sure that you received my original sunshine request to Olive Gong at the RPD and her subsequent response. I am absolutely certain that the requested documents exist. This will be the first of two exchanges between myself and Olive Gong.

Thank you for your consideration. Should you have any questions, please don't hesitate to either send me an email or call me at 415 [REDACTED]

Best Regards,

George

FYI

Begin forwarded message:

From: Olive.Gong@sfgov.org
Date: June 8, 2011 1:43:28 PM PDT
To: George Wooding <[REDACTED]@bigeds.com>
Subject: Response to your request dated 6/3/2011

Dear Mr. Wooding,

Staff has searched in their records and there are no documents in response to your request dated 6/3/2011 (also copied below).

Thank you for your interest in SF Recreation and Parks,
Olive Gong

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge

501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

From: George Wooding <[REDACTED]@bigeds.com>
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Ms. Gong,

This is a Sunshine Request. Please send to me the following information:

Time Period: from April 15th, 2011 through May 30th, 2011

Subject Matter: The Commonwealth Club program of May 11th, 2011 on Golden Gate Park. Content should include but is not limited to subject matter of the panel, information or comments on panel members, Recreation and Parks Department participation, Recreation and Park Commission participation, and all other issues related to this program.

Documents requested: All emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate Park.

Correspondence: Should include all emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate



George Wooding
[REDACTED]@bigeds.com>
06/21/2011 05:40 PM

To: chris.rustom@sfgov.org
cc: sotf@sfgov.org
bcc:

Subject: Fwd: Sunshine requests of 6/03/11 and 6/09/11. This is an immediate request

Hi Chris,

this is my second letter to Ms. Gong

George

Begin forwarded message:

From: George Wooding <[REDACTED]@bigeds.com>
Date: June 10, 2011 8:51:49 AM PDT
To: olive.gong@sfgov.org
Subject: **Sunshine requests of 6/03/11 and 6/09/11. This is an immediate request**

Dear Ms. Gong,

RE: This is an immediate request to find out how the RPD decided (process) that there were no documents that would adequately respond to my sunshine requests of 6/03/11 and 6/09/11.

Pursuant to the San Francisco Sunshine Ordinance and the California Public Records Act, I want to know the process you used to determine that there were no documents in response to my Sunshine Requests of 6/3/11 and 6/9/11.

1. Name all people asked.
2. Tell me the question asked.
3. Tell me the response from each person asked each question.

This includes verbal as well as written communications.

George Wooding

Park between, to, and or from the following persons:

Recreation and Park Department and Commission: Sarah
Ballard, Mark Buell, Phil Ginsburg, Elton Pon, Staci White,

Commonwealth Club: Officers, staff, program
directors, and volunteers

Please let me know when this information will be available. I would
prefer this to be in electronic format. Please let me know if there
will be any costs associated with this request.

Sincerely,

George Wooding

From: Olive.Gong@sfgov.org

Date: June 9, 2011 2:19:04 PM PDT

To: George Wooding <[REDACTED]@bigeds.com>

Subject: Response to your request dated 6-9-2011

Dear Mr. Wooding,

We do not have any further documents in response to your request dated
6/3/2011 and 6/9/2011.

Thank you for your interest in SF Recreation and Parks,

Olive

Olive Gong

San Francisco Recreation and Park Department

McLaren Lodge

501 Stanyan St., SF CA 94117

415.831-2708 direct

415.831-2096 fax

olive.gong@sfgov.org email

Reduce, Reuse, Recycle

From: George Wooding <[REDACTED]@bigeds.com>

To: olive.gong@sfgov.org

Date: 06/09/2011 11:41 AM

Subject: This is in reference to my May 11th immediate disclosure
request for RPD memo/documents on the Commonwealth Club Program

RE: This is in reference to my May 11th immediate disclosure request
for RPD memorandums/documents on the Commonwealth Club program and
your inadequate response that no such documents exist.

Dear Ms. Gong

It is unclear to me what you mean by your statement that "staff has searched in their records and there are no documents in response to your

request dated 6/3/2011".

Pursuant to the San Francisco Sunshine Ordinance and the California Public Records Act, please identify the staff who searched and what specific

documents were reviewed in their search including all electronic communication sources, e-mails, correspondence, reports, proposals, notes,

letters, memoranda and other electronic and non-electronic documents pertaining to the Commonwealth Club of California May 11, 2011, program

about Golden Gate park (also known as Golden Gate Park Under Siege) in which Mark Buell participated.

My request includes all electronic and non-electronic communications, documents and correspondence sent and received by San Francisco Recreation

and Park employees and members of the San Francisco Recreation and Park Commission, including but not limited to Mark Buell, President of the

San Francisco Recreation and Parks Commission, Phil Ginsberg, General Manager, San Francisco Recreation and Parks Department and Sarah Ballard,

Director of Policy and Public Affairs.

I understand that if documentation is not forthcoming, I have the right to file a Sunshine complaint as well as to take action as provided by

the California Public Records Act.

If the records and documents are not in your possession, I request respectfully your assistance in directing me to the proper office, staff,

administrator, public appointee, public official and person(s).

Regards,

George Wooding

415 

[attachment "How RPD revenue to be used.doc" deleted by Olive

Gong/YPD/SFGOV]

De

George Wooding
Delbrook Avenue
San Francisco, CA 94131

Phone: (415) [REDACTED] • e-mail: [REDACTED]@bigeds.com

July 5, 2011

Chris Rustom
Task Force Administrator
Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint Regarding Failure to Provide Records

Dear Mr. Rustom,

Complaint against which Department or Commission:

- Recreation and Parks Department
- Recreation and Parks Commission

Name of individual(s) responsible at Department or Commission

- Philip Ginsburg, Recreation and Parks Department
- Mark Buell, Recreation and Parks Commission
- Sara Ballard, Recreation and Parks Department
- Olive Gong, Recreation and Parks Department

Alleged Violation: ☒ Public Records Access ☐ Public Meeting

Sunshine Ordinance Section(s) §67.24 and/or §67.26

Do you want a public hearing before the Sunshine Ordinance Task Force?

☒ Yes ☐ No

Do you want a pre-hearing conference before the Complaint Committee?

☐ Yes ☒ No

I request confidentiality of my personal information

☒ Yes ☐ No

Please describe alleged violation.

1. Description

As the then-president of the West of Twin Peaks Central Council, I was invited to be a panelist on a Commonwealth Club forum led by its Environment and Natural Resources committee, a member-led group of volunteers. The May 11 panel discussion was titled "Golden Gate Park Under Siege!" and initially was scheduled to have five panelists.

On May 3, the title of the event was changed to "Golden Gate Park Under Siege?" [changing the exclamation point to a question mark] and a fifth panelist — Mark Buell, President of the Recreation and Parks Commission — was added at the last minute.

Clearly, the Recreation and Parks Department must possess some type of correspondence and/or e-mails scheduling Mr. Buell for the Commonwealth Club's panel discussion.

- a. On June 3, I placed an immediate disclosure request for public records with Olive Gong, whom I had previously been instructed to submit public records requests to (see Enclosure 1). Ms. Gong is a 1446 Secretary II at RPD. I specifically asked for any correspondence, e-mails or other documents between April 15 and May 30 pertaining to the May 11 Commonwealth Club program, and specified I was seeking any correspondence between RPD employees Sara Ballard, Phil Ginsburg, Elton Pon, and Staci White and Mr. Buell to or from each other, and/or exchanged with officers, staff, program directors and volunteers of the Commonwealth Club.

I requested any records involving the subject matter of the forum, information or comments on panelists, RPD participation, Rec and Park Commission participation, and all other issues related to the May 11 program.

- b. On June 8, Ms. Gong responded (see Enclosure 2) indicating RPD staff had searched their records and there were no responsive records.

July 5, 2011

Re: Complaint Regarding Failure to Provide Records

Page 2

- c. On June 9, I followed up with Ms. Gong (see Enclosure 3), indicating that her response was unclear. I asked her to identify the staff who had searched for documents, and what specific document(s) were reviewed in their search of records. I requested all electronic and non-electronic communications and correspondence. I also asked that if the records were not in her possession that I be directed to the appropriate staff who may have responsive records.
- d. Also on June 9, Ms. Gong responded (see Enclosure 4), saying only that "We do not have any further documents in response" to my June 3 and June 9 records requests. She did not direct me to any other staff members.
- e. On June 10, I submitted a second follow-up request (see Enclosure 5) that I marked as an "immediate request," asking Ms. Gong for the name of all people she had asked, what question(s) had been asked of staff, and the response each person provided to each question asked. I attempted to find out the process RPD used to determine that there were no responsive records. As of today's date, I have received no reply from Ms. Gong to my June 10 e-mail.
- f. I spoke with Olive Gong by phone, and told her there must be some written communications between the RPD and the Commonwealth Club. She verbally told me again that there were no corresponding documents.

I have reason to believe that RPD staff did, in fact, exchange e-mails with Commonwealth Club staff and volunteers prior to the Commonwealth Club's May 11 member-led forum. For over 30 days, RPD has failed to provide the requested records that I believe exist.

2. Remedies Sought

Should the Sunshine Ordinance Task Force find that this complaint has merit, I specifically request that the Task Force's Order of Determination be worded to order that:

- a. The Recreation and Parks Department and the Recreation and Parks Commission release any and all e-mails, correspondence or other documents regarding the Commonwealth Club's May 11 panel, to include any e-mails internal to RPD and any e-mails from Mr. Buell's, Mr. Ginsburg's, and other RPD staff member's personal e-mail accounts sent to the Commonwealth Club regarding the May 11 forum.
- b. The RPD provide any and all e-mails and correspondence received from Commonwealth Club staff or volunteers regarding its May 11 forum, whether to RPD or Recreation and Park Commission staff at their City e-mail accounts or addressed to RPD staff's personal e-mail accounts.
- c. The Recreation and Parks Department provide a list of all staff members who were asked by Ms. Gong to search their records for materials responsive to my initial records request.

Sincerely,

George Wooding

Enclosure 1: George Wooding June 3, 2011 Records Request to RPD

From: George Wooding <[REDACTED]@bigeds.com>
Date: 06/03/2011 12:35 PM
To: Olive.gong@sfgov.org
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Ms. Gong,

This is a Sunshine Request. Please send to me the following information:

Time Period: from April 15th, 2011 through May 30th, 2011

Subject Matter: The Commonwealth Club program of May 11th, 2011 on Golden Gate Park. Content should include but is not limited to subject matter of the panel, information or comments on panel members, Recreation and Parks Department participation, Recreation and Park Commission participation, and all other issues related to this program.

Documents requested: All emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate Park.

Correspondence: Should include all emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate Park between, to, and or from the following persons:

- Recreation and Park Department and Commission: Sarah Ballard, Mark Buell, Phil Ginsburg, Elton Pon, Staci White
- Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

Enclosure 2: Olive Gong June 8, 2011 First Response to George Wooding

From: Olive.gong@sfgov.org
Date: June 8, 2011 1:43:28 PM PDT
To: George Wooding <[REDACTED]@bigeds.com>
Subject: Response to your request dated 6/3/2011

Dear Mr. Wooding,

Staff has searched in their records and there are no documents in response to your request dated 6/3/2011 (also copied below).

Thank you for your interest in SF Recreation and Parks,

Olive Gong

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2098 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

Enclosure 3: George Wooding June 9, 2011 First Follow-Up to Olive Gong

From: George Wooding <[REDACTED]@bigeds.com>
Date: 06/09/2011 11:41 AM
To: Olive.gong@sfgov.org
Subject: This is in reference to my May 11th immediate disclosure request for RPD memo/documents on the Commonwealth Club Program

Re: This is in reference to my May 11th immediate disclosure request for RPD memorandums/documents on the Commonwealth Club program and your inadequate response that no such documents exist.

Dear Ms. Gong

It is unclear to me what you mean by your statement that "staff has searched in their records and there are no documents in response to your request dated 6/3/2011".

Pursuant to the San Francisco Sunshine Ordinance and the California Public Records Act, please identify the staff who searched and what specific documents were reviewed in their search including all electronic communication sources, e-mails, correspondence, reports, proposals, notes, letters, memoranda and other electronic and non-electronic documents pertaining to the Commonwealth Club of California May 11, 2011, program about Golden Gate park (also known as Golden Gate Park Under Siege) in which Mark Buell participated.

My request includes all electronic and non-electronic communications, documents and correspondence sent and received by San Francisco Recreation and Park employees and members of the San Francisco Recreation and Park Commission, including but not limited to Mark Buell, President of the San Francisco Recreation and Parks Commission, Phil Ginsberg, General Manager, San Francisco Recreation and Parks Department and Sarah Ballard, Director of Policy and Public Affairs.

I understand that if documentation is not forthcoming, I have the right to file a Sunshine complaint as well as to take action as provided by the California Public Records Act.

If the records and documents are not in your possession, I request respectfully your assistance in directing me to the proper office, staff, administrator, public appointee, public official and person(s).

Regards,

George Wooding
415 [REDACTED]

[attachment "How RPD revenue to be used.doc" deleted by Olive Gong/RPD/SFGOV]

Enclosure 4: Olive Gong June 9, 2011 Second Response to George Wooding

From: Olive.gong@sfgov.org
Date: June 9, 2011 2:19:04 PM PDT
To: George Wooding <[REDACTED]@bigeds.com>
Subject: Response to your request dated 6-9-2011

Dear Mr. Wooding,

We do not have any further documents in response to your request dated 6/3/2011 and 6/9/2011.

Thank you for your interest in SF Recreation and Parks,

Olive Gong

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

Enclosure 5: George Wooding June 10, 2011 Second Follow-Up to Olive Gong

From: George Wooding <[REDACTED]@blgads.com>
Sent: Friday, June 10, 2011 8:52 AM
To: Olive.gong@sfgov.org
Subject: Sunshine requests of 6/03/11 and 6/09/11. This is an immediate request

RE: This is an immediate request to find out how the RPD decided (process) that there were no documents that would adequately respond to my sunshine requests of 6/03/11 and 6/09/11.

Pursuant to the San Francisco Sunshine Ordinance and the California Public Records Act, I want to know the process you used to determine that there were no documents in response to my Sunshine Requests of 6/3/11 and 6/9/11.

1. Name all people asked.
2. Tell me the question asked.
3. Tell me the response from each person asked each question.

This includes verbal as verbal as well as written communications.

George Wooding

Figure 1:

RPD Employee Sara Ballard April 20 E-mail to Commonwealth Club Member Ross Lawley

From: Sarah.Ballard@sfgov.org (mailto:Sarah.Ballard@sfgov.org)
Sent: Wednesday, April 20, 2011 2:40 PM
To: Ross Lawley
Subject: GGP Under Siege

Mr. Lawley,

Thank you for your help yesterday and for suggesting that I connect with Mr. Curt's to discuss the City's concerns with the member-led forum entitled, "Golden Gate Park Under Siege." Could you please forward this to him?

As we discussed, the headline, summary of the talk and the panels all suggest an overall tone that is more likely to incite an audience than it is to rationally discuss the facts and merits of the Recreation and Park's current direction. We were all deeply surprised to see the Commonwealth Club's name attached to something that was so clearly hyperbolic.

The Recreation and Park Department has faced over \$45 million of budget cuts in the last six years. Instead of continuing to slash services to the public, the Department has attempted to increase our earned revenue streams, which will enable us to continue to serve the people of San Francisco. We have done this through increasing philanthropy, special events and amenities in our parks (such as the ability to rent a bike in one park, ride it to another and leave it there). Our focus has been on site-appropriate park amenities that enhance the user's experience while giving us a dedicated revenue stream, a revenue stream that will help keep our parks clean and our rest centers and pools open.

While we understand that there is a legitimate debate about amenities and special events in parks, we feel this will be near impossible given the current makeup of the forum panel which includes individuals who have recently resorted to some very personal vitriol directed at both our Commission and our staff.

I write in the hopes that the Commonwealth Club will see that this is a deeply biased panel that has no interest in discussing facts. I am hopeful that you can cancel the panel and perhaps work to put on a more balanced forum that focuses on problem solving. In an era of shrinking resources, it is impossible for the Parks Department to continue to provide the same level of heavily subsidized services to the public without thinking creatively about how to both fund and deliver those services. We are well aware that our current approach is one of many valid approaches and think a conversation about that fact would be much more appropriate.

Again, thank you for your time.

Best,

Sarah

Sarah Ballard
Director of Policy and Public Affairs
San Francisco Recreation and Parks
McLaren Lodge
Golden Gate Park
501 Stanyan Street
San Francisco, CA 94117

p- 415-831-2740
f- 415-831-2096

www.parks.sfgov.org

Figure 2:

RPD Employee Sara Ballard April 20 E-mail to Commonwealth Club Member Kerry Curtis

>>> On 4/20/2011 at 3:41 PM, in message <OF12823D27.F3EBFF62-ON59257878.007C7627-88257878.007C88DF@sfgov.org>, <Sara.Ballard@sfgov.org> wrote

Thank you, Mr. Curtis. We appreciate it. At least one of the panelists, if not two, speak only for themselves. Their "organizations" do not appear to have member, by-laws or formal meetings, so I am confident the discussion would be heavily skewed.

I look forward to hearing from you.

Sarah

Sarah Ballard
Director of Policy and Public Affairs
San Francisco Recreation and Parks
McLaren Lodge
Golden Gate Park
501 Stanyan Street
San Francisco, CA 94117
p- 415-831-2740
f- 415-831-2096
www.parks.sfgov.org

Figure 3:

RPD Commission President Mark Buell April 25 E-mail to Commonwealth Club Member Greg Dalton

-----Original Message-----
From: mbuell@aol.com [mailto:mbuell@aol.com]
Sent: Monday, April 25, 2011 2:24 PM
To: Greg Dalton; jlm@sfbbeautiful.org; phil ginsburg
Subject: May 11

Greg, I have been informed that the Commonwealth Club is hosting a panel on May 11 entitled "Golden Gate Park under siege". Claiming that there are plans for privatization and industrial development. I assume these relate to a water plant and providing additional food vendors. I find the title inflammatory, the participants biased and the fact that no one from the Rec and Park department invited hard to understand. As president of the Commission I would like to urge the club to both alter the title of the event to "Issues facing the Park" and have the club ask a representative of the Department to be on the Panel. Thanks, Mark

Sent via BlackBerry by AT&T

Figure 4:

Commonwealth Club Member Kerry Curtis April 26 E-mail to RPD Commission President Mark Buell

RE: May 11
"Kerry Curtis" <kc Curtis@sfgov.edu>
mbuell@aol.com, gdalton@commonwealthclub.org, pginsburg@abcglobal.net,
jlm@sfbbeautiful.org
mailto:sk@yahoo.com

Hi Mark,

I hope you can bear with me for a day or so while I get my arms around this a little better. I'll get back to you when I have a more coherent position, and today is pretty busy for me

Kerry

Kerry Curtis
Professor Emeritus, Golden Gate University
Co-Chair, Environmental Forum, Commonwealth Club

Figure 5:
Susan Hirsch¹ May 3 E-mail to "May 11 Forum" Moderator Jim Chappell

— Forwarded Message —

From: Susan Hirsch <susan@hirschassoc.com>

To: "Chappell jim@att.net" <Chappell jim@att.net>

Sent: Tue, May 3, 2011 6:34:25 PM

Subject: follow up

Hi Jim:

Hope you are doing well.

I wanted to follow up to the phone message I left you regarding the upcoming Commonwealth Club discussion about Golden Gate Park. I am pleased that there is an opportunity to discuss current issues affecting kids and families in San Francisco; I am surprised though, that the panel is only representative of those who oppose change, and the City Fields Beach Chalet renovation. You know better than many from your days at SPUR that change can be complicated and often mis-communicated; it is the responsibility of those who care about an engaged public, to present more than one perspective.

You and I discussed this project years ago; the private sector is contributing far more than \$20 million to provide safe, accessible, and yes, environmentally sound fields for kids all across San Francisco to use. We have a unique public/private partnership with Rec and park; it's too bad the focus is on something negative, rather than the positive impact.

I look forward to discussing this with you further.

Regards,
Susan

Susan Mayer Hirsch
Hirsch and Associates, LLC

¹ Ms. Hirsch is Director of the City Fields Foundation and CEO of Hirsch and Associates, LLC, Philanthropic Advisors.



George Wooding
[REDACTED]@bigeds.com>
07/19/2011 02:56 PM

To: chrfs.rustom@sfgov.org
cc: sotf@sfgov.org
bcc:
Subject: Soft complaint #11-049, Wooding Vs. The Recreation and
Park Department

History: [REDACTED] This message has been replied to.

Dear Mr. Rustom,

Attached are additional supplementary materials regarding my sunshine request against the Recreation and Park Department (RPD) and the Recreation and Park Commission (RPC) for consideration by the full task force when it hears complaint number 11-049 on July 26th.

Although RPD's Ms. Gong has claimed that there were "No responsive records" to my records request, several emails have surfaced which suggest evidence otherwise.

REQUEST: I am handicapped and have difficulty sitting or standing for long periods of time. Due to my condition, it would be a kindness if my complaint #11-049 could be one of the first complaints considered by the task force on July 26th. Please advise.

Thank you for your consideration and I look forward to hearing from you as soon as possible

Best Regards,

Geor W ng
415 [REDACTED] [REDACTED]



11049 George Wooding Supplementary to SOTF 11-07-13.pdf

George Wooding
Dellbrook Avenue
San Francisco, CA 94131

Phone: (415) [REDACTED] • e-mail: [REDACTED]@bigeds.com

July 19, 2011

Chris Rustom
Task Force Administrator
Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: SOTF Complaint #11-049 Supplementary Materials

Dear Mr. Rustom,

Enclosed are additional supplementary materials regarding my Sunshine Complaint against the Recreation and Park Department and the Recreation and Park Commission for consideration by the full Task Force when it hears complaint #11-049 on July 26.

Although RPD's Ms. Gong has claimed there were "no responsive records" to my records request, several e-mails have surfaced which suggest evidence otherwise:

- Figure 1 in this document shows RPD's Director of Policy and Public Affairs, Sarah Ballard, wrote to the Commonwealth Club on April 20 from her City e-mail account, the day after placing a phone call to the Commonwealth Club on April 19, claiming that the proposed panelists for the Commonwealth Club's May 11 forum on the Recreation and Park Department were "likely to incite an audience," may have not been able to "rationally discuss" the issues, were "deeply biased," and had "no interest in discussing facts." She requested that the forum be canceled.
- Figure 2 in this document is another April 20 e-mail from Ms. Ballard using her City e-mail account to a second Commonwealth Club member, alleging that some of the proposed panelists did not have member meetings, by-laws or formal meetings, and the panelists would be "heavily skewed."
- Figure 3 shows that Recreation and Park Commission president Mark Buell also alleged on April 25 that the Commonwealth Club's May 11 forum's proposed panelists were "biased." Notably Buell c'd both Phil Ginsburg, RPD's General Manager (at either Mr. Ginsburg's City e-mail address or personal e-mail address, which is unclear), and also Jim Chappell.
- Figure 4 is a response from the Commonwealth Club's Kerry Curtis in reply to Mr. Buell, and to Mr. Ginsburg, at Ginsburg's private e-mail address.
- Figure 5 is an e-mail from Susan Hirsch, Director of the *City Fields Foundation* and CEO of *Hirsch and Associates, LLC, Philanthropic Advisors*, to forum moderator Jim Chappell claiming the May 11 forum panelists were only representative of people who oppose change. Hirsch's e-mail shows that a "partner" in a public-private partnership may have been attempting to influence the public on behalf of a Department's business.

Given the evidence presented in these five figures, it is unlikely that there are not other e-mails exchanged in RPD's and the City's internal e-mail system, or in personal e-mail accounts, between Mr. Ginsburg, Mr. Buell, Ms. Hirsch, Ms. Ballard, and other RPD or other City employees relating to the Commonwealth Club's forum that should be produced.

Based on the new evidence enclosed that has become available to date showing that RPD and RPC, in fact, had in its possession e-mail records withheld from my records request, I ask that the Sunshine Ordinance Task Force find in my favor, and order the Recreation and Parks Department and the Recreation and Parks Commission to search their records again — including the private e-mails of Mr. Ginsburg, Mr. Buell, and any and all other RPD or City officials, and including the Deputy City Attorney assigned to the Recreation and Parks Department and the Recreation and Parks Commission — and produce any and all communications that I had initially sought to obtain in my initial records request.

Sincerely,

George Wooding



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

July 19, 2011

Honorable Members
Sunshine Ordinance Task Force
c/o Frank Darby, Administrator
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

Re: Complaint #11049 George Wooding v Recreation and Park Department

Dear Task Force Members:

This letter is in response to Complaint #11049, filed by George Wooding against the Recreation and Park Department, a copy of which was received by the Department on June 24, 2011.

The complaint concerns Mr. Wooding's request for all communications and documents related to the Commonwealth Club Program of May 11th, 2011. The time period requested for documents was April 15th - May 30th, 2011.

On June 8, 2011, Department staff responded to Mr. Wooding's request "Staff has searched in their records and there are no documents in response to your request dated 6/3/2011". (Exhibit A)

On June 9, 2011, Mr. Wooding sent a followup request:

"Identify the staff who searched and what specific documents were reviewed in their search including all electronic communication sources, e-mails, correspondence, reports, proposals, notes, letters, memoranda and other electronic and non-electronic documents pertaining to the Commonwealth Club of California May 11, 2011, program about Golden Gate park (also known as Golden Gate Park Under Siege) in which Mark Buell participated.

My request includes all electronic and non-electronic communications, documents and correspondence sent and received by San Francisco Recreation and Park employees and members of the San Francisco Recreation and Park Commission, including but not limited to Mark Buell, President of the San Francisco Recreation and Parks Commission, Phil Ginsberg, General Manager, San Francisco Recreation and Parks Department and Sarah Ballard, Director of Policy and Public Affairs."

On June 9, 2011, Department staff responded to Mr. Wooding's request "We do not have any further documents in response to your request dated 6/3/2011 and 6/9/2011". (Exhibit B)

If I can be of further assistance to the Task Force, please do not hesitate to contact me.

Sincerely,

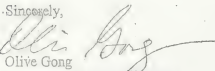

Olive Gong
Custodian of Records, SFRPD

Exhibit A



Response to your request dated 6/3/2011
Olive Gong to: George Wooding

06/08/2011 01:43 PM

Dear Mr. Wooding,

Staff has searched in their records and there are no documents in response to your request dated 6/3/2011 (also copied below).

Thank you for your interest in SF Recreation and Parks,
Olive Gong

Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

George Wooding

Re: Immediate Disclosure Request: RPD memo...

06/03/2011-12:35:47 PM

From: George Wooding <mother_ed@bigeds.com>
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Ms. Gong,

This is a Sunshine Request. Please send to me the following information:

Time Period: from April 15th, 2011 through May 30th, 2011

Subject Matter: The Commonwealth Club program of May 11th, 2011 on Golden Gate Park. Content should include but is not limited to subject matter of the panel, information or comments on panel members, Recreation and Parks Department participation, Recreation and Park Commission participation, and all other issues related to this program.

Documents requested: All emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate Park.

Correspondence: Should include all emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate Park between, to, and or from the following persons:

- Recreation and Park Department and Commission: Sarah Ballard, Mark Buell, Phil Ginsburg, Elton Pon, Staci White,
- Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

Exhibit B



Response to your request dated 6-9-2011
Olive Gong to: George Wooding

06/09/2011 02:19 PM

Dear Mr. Wooding,

We do not have any further documents in response to your request dated 6/3/2011 and 6/9/2011.

Thank you for your interest in SF Recreation and Parks,
Olive

Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

George Wooding

> RE: This is in reference to my May 11th Imme..

06/09/2011 11:41:45 AM

From: George Wooding <mother_ed@bigeds.com>
To: olive.gong@sfgov.org
Date: 06/09/2011 11:41 AM
Subject: This is in reference to my May 11th immediate disclosure request for RPD memo/documents on the Commonwealth Club Program

RE: This is in reference to my May 11th immediate disclosure request for RPD memorandums/documents on the Commonwealth Club program and your inadequate response that no such documents exist.

Dear Ms. Gong

It is unclear to me what you mean by your statement that "staff has searched in their records and there are no

Pursuant to the San Francisco Sunshine Ordinance and the California Public Records Act, please identify the their search including all electronic communication sources, e-mails, correspondence, reports, proposals, not documents pertaining to the Commonwealth Club of California May 11, 2011, program about Golden Gate Park. Buell participated.

My request includes all electronic and non-electronic communications, documents and correspondence sent a members of the San Francisco Recreation and Park Commission, including but not limited to Mark Buell, Ph.D., General Manager, San Francisco Recreation and Parks Department and Sarah Ballard, Director of

I understand that if documentation is not forthcoming, I have the right to file a Sunshine complaint as well as
If the records and documents are not in your possession, I request respectfully your assistance in directing me
official and person(s).

Regards,

George Wooding

415 695-1393

Document Not Released to Public Under the Act



Olive Gong/RPD/SFGOV
07/20/2011 01:35 PM

To George Wooding <mother_ed@bigeds.com>

cc SOTF/SOTF/SFGOV@SFGOV

bcc

Subject Re: Sunshine Complaint Received: #11049_George
Wooding v Recreation and Park Department

Dear Mr. Wooding,

In response to your complaint below, I am just reiterating that we do not have any documents nor any correspondence related to the Commonwealth Club Presentation of May 11, 2011, from the time period of Apr - 15 through May 30, 2011.

The only correspondence I have are emails from staff affirming that they do not have any documents-- this is outside the time period you have specified in your complaint, but I am including them as you expressed interest in them in our conversation on the phone today.

Sincerely,
Olive Gong

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

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emails from staff.pdf

From: SOTF/SOTF/SFGOV
To: Olive Gang/YPD/SFGOV@SFGOV
Date: 06/24/2011 04:10 PM
Subject: Sunshine Complaint Received: #11049 George Wooding v Recreation and Park Department

This e-mail is to confirm that the attached complaint and support documents have been received. The Department is required to submit a response to the charges to the Task Force within five business days of receipt of this notice. Please refer to complaint number #11049 when submitting any new information and/or supporting documents pertaining to this complaint.

If the Department contests jurisdiction or if the parties request a prehearing conference a hearing will be scheduled with the Complaint Committee of the Sunshine Ordinance Task Force who will determine whether the Task Force has jurisdiction over this matter, and/or to focus the complaint or to otherwise assist the parties to the complaint.

Date: Tuesday, July 12, 2011
Location: City Hall, Room 406
Time: 3:30 P.M.

Any support documents to be considered by committee members, prior to the hearing/meeting, must be submitted by 4:00 P.M. Tuesday, July 5, 2011.

If the Department does not contest jurisdiction or if the parties don't request a prehearing conference a hearing will be scheduled with the full Sunshine Ordinance Task Force who will hear the merits of the complaint and issue a determination.

Date: Tuesday, July 26, 2011
Location: City Hall, Room 408
Time: 4:00 P.M.

Complainants: Your attendance is required at this meeting/hearing.

Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance, attendance by the custodian of records or a representative of your department, who can speak to the matter, is required at the meeting/hearing.

Any support documents to be considered by Task Force members, prior to the hearing/meeting,

must be submitted by 4:00 P.M. Tuesday, July 19, 2011.

Also, attached is the Sunshine Ordinance Task Force's complaint procedures.

[attachment "11049_Complaint.pdf" deleted by Olive Gong/RPD/SFGOV] [attachment
"1_Complaint Procedures_4-28-09_Final.pdf" deleted by Olive Gong/RPD/SFGOV]

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
OFC: (415) 554-7724
FAX: (415) 554-7854
SOTF@sfgov.org



Olive:Gong/RPD/SFGOV
07/20/2011 01:35 PM

To: George Wooding <[REDACTED]@bigeds.com>
cc: SOTF/SOTF/SFGOV@SFGOV
bcc:
Subject: Re: Sunshine Complaint Received: #11049_George Wooding
v Recreation and Park Department [REDACTED]

Dear Mr. Wooding,

In response to your complaint below, I am just reiterating that we do not have any documents nor any correspondence related to the Commonwealth Club Presentation of May 11, 2011, from the time period of Apr - 15 through May 30, 2011.

The only correspondence I have are emails from staff affirming that they do not have any documents-- this is outside the time period you have specified in your complaint, but I am including them as you expressed interest in them in our conversation on the phone today.

Sincerely,
Olive Gong

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2098 fax
olive.gong@sfgov.org email

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email from staff.pdf

SOTF--06/24/2011 04:10:20 PM---This e-mail is to confirm that the attached complaint and support docum

##

From: Staci White/RPD/SFGOV
To: Olive Gong/RPD/SFGOV@SFGOV
Date: 06/06/2011 11:35 AM
Subject: Re: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Hi Olive,

Neither I nor Phil have any documents responsive to the request below.

Staci

Staci L. White
Executive Assistant to the General Manager
Recreation and Park Department
McLaren Lodge, GGP
501 Stanyan St., SF CA 94117
(415) 831-2701 / (415) 831-2096 (Fax)

From: Olive Gong/RPD/SFGOV
To: Sarah Ballard/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Elton Pon/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV
Date: 06/03/2011 12:41 PM
Subject: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Hi Folks,

Do you have any documents responsive to the request below?
Thanks for your help with this request,
Olive

----- Forwarded by Olive Gong/RPD/SFGOV on 06/03/2011 12:39 PM -----

From: George Wooding <[REDACTED]@bigeds.com>
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Ms. Gong,

This is a Sunshine Request. Please send to me the following information:

Time Period: from April 15th, 2011 through May 30th, 2011

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- Recreation and Park Department and Commission: Sarah Ballard, Mark Buell, Phil Ginsburg, Elton Pon, Staci White,
- Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

##

From: Sarah Ballard/RPD/SFGOV
To: Olive Gong/RPD/SFGOV@SFGOV
Cc: Elton Pon/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV
Date: 06/06/2011 12:03 PM
Subject: Re: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

I have nothing.

Sarah Ballard
Director of Policy and Public Affairs
San Francisco Recreation and Parks
McLaren Lodge
Golden Gate Park
501 Stanyan Street
San Francisco, CA 94117

p- 415-831-2740
f- 415-831-2096
www.parks.sfgov.org

From: Olive Gong/RPD/SFGOV
To: Sarah Ballard/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Elton Pon/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV
Date: 06/03/2011 12:41 PM
Subject: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Hi Folks,

Do you have any documents responsive to the request below?
Thanks for your help with this request,
Olive

----- Forwarded by Olive Gong/RPD/SFGOV on 06/03/2011 12:39 PM -----

From: George Wooding [REDACTED]@bigeds.com>
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Ms. Gong,

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- Recreation and Park Department and Commission: Sarah Ballard, Mark Buell, Phil Ginsburg, Elton Pon, Staci White,
- Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

##

From: Nicholas Kinsey/RPD/SFGOV
To: Olive Gong/RPD/SFGOV@SFGOV
Cc: bdennis@sfbotanicalgarden.org, Cristina Garcia/RPD/SFGOV@SFGOV, Dawn Kamalanathan/RPD/SFGOV@SFGOV, Elaine Sullivan/RPD/SFGOV@SFGOV
Date: 05/10/2011 04:42 PM
Subject: Re: Sunshine Request-- RPD memos on Commonwealth Club program of May 11th, 2011

I do not have anything responsive

Thanks,

Nick

Nicholas A. Kinsey
Assistant Director of Property and Concession Management
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan Street
San Francisco, CA 94117

Tel. (415) 831-2774
Fax (415) 831-2099

From: Olive Gong/RPD/SFGOV
To: bdennls@sfbotanicalgarden.org, Dawn Kamalanathan/RPD/SFGOV@SFGOV, Nicholas Kinsey/RPD/SFGOV@SFGOV, Elaine Sullivan/RPD/SFGOV@SFGOV
Cc: Cristina Garcia/RPD/SFGOV@SFGOV
Date: 06/10/2011 04:40 PM
Subject: Sunshine Request-- RPD memos on Commonwealth Club program of May 11th, 2011

Hi Folks,

Do you have any documents in response to the request below?

Thank you for your help,
Olive

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

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— Forwarded by Olive Gong/RPD/SFGOV on 06/10/2011 04:32 PM —

From: George Wooding <[REDACTED]@bigeds.com>
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

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- Recreation and Park Department and Commission: Sarah Ballard, Mark Buell, Phil Ginsburg, Elton Pon, Staci White,
- Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

##

From: Brent Dennis <bdennis@sfgov.org>
To: "Olive.Gong@sfgov.org" <Olive.Gong@sfgov.org>, "Dawn.Kamalanathan@sfgov.org" <Dawn.Kamalanathan@sfgov.org>, "Nicholas.Kinsey@sfgov.org" <Nicholas.Kinsey@sfgov.org>, "Elaine.Sullivan@sfgov.org" <Elaine.Sullivan@sfgov.org>, "Cristina.Garcia@sfgov.org" <Cristina.Garcia@sfgov.org>
Cc:
Date: 05/10/2011 05:37 PM
Subject: RE: Sunshine Request-- RPD memos on Commonwealth Club program of May 11th, 2011

Olive, nothing from me, good luck. Have a very nice weekend, Brent

-----Original Message-----

From: Olive.Gong@sfgov.org [mailto:Olive.Gong@sfgov.org]
Sent: Friday, June 10, 2011 4:40 PM
To: Brent Dennis; Dawn.Kamalanathan@sfgov.org;
Nicholas.Kinsey@sfgov.org; Elaine.Sullivan@sfgov.org
Cc: 'Cristina.Garcia@sfgov.org'
Subject: Sunshine Request-- RPD memos on Commonwealth Club
program of May 11th, 2011

Hi Folks,

Do you have any documents in response to the request below?

Thank you for your help,
Olive

.....
.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

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----- Forwarded by Olive Gong/RPD/SFGOV on 06/10/2011 04:32 PM -----

From: George Wooding [REDACTED]@bigeds.com
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD
memos on Commonwealth
Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth
Club program
of May 11th, 2011

Ms. Gong,

This is a Sunshine Request. Please send to me the
following
information:

Time Period: from April 15th, 2011 through May 30th,

2011

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Correspondence: Should include all emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate Park between, to, and or from the following persons:

Commission: * Sarah Recreation and Park Department and
Ballard, Mark Buell, Phil Ginsburg, Elton Fon,
Staci White,
* Commonwealth Club: Officers, staff,
program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,
George Wooding

##

From: Elaine Sullivan/RPD/SFGOV
To: Olive Gong/RPD/SFGOV@SFGOV
Date: 06/13/2011 11:34 AM
Subject: Re: Sunshine Request- RPD memos on Commonwealth Club program of May 11th, 2011

Hello!

Since I don't actually know what the Commonwealth Club meeting was about, I'm pretty sure I don't have anything related to it.

See you around,

Elaine Sullivan
City Hall Fellow
San Francisco Department of Recreation and Parks
501 Stanyan Street
San Francisco, CA 94117
(415)-831-6357
sfrecpark.org

Exhibit 1

##

From: Staci White/RPD/SFGOV
To: Olive Gong/RPD/SFGOV@SFGOV
Date: 06/06/2011 11:35 AM
Subject: Re: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Hi Olive,

Neither I nor Phil have any documents responsive to the request below.

Staci

Staci L. White
Executive Assistant to the General Manager
Recreation and Park Department
McLaren Lodge, GGP
501 Stanyan St., SF CA 94117
(415) 831-2701 / (415) 831-2096 (Fax)

From: Olive Gong/RPD/SFGOV
To: Sarah Ballard/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Elton Pon/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV
Date: 06/03/2011 12:41 PM
Subject: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Hi Folks,

Do you have any documents responsive to the request below?

Thanks for your help with this request,
Olive

----- Forwarded by Olive Gong/RPD/SFGOV on 06/03/2011 12:39 PM -----

From: George Wooding <mother_ed@bigeds.com>
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Ms. Gong,

This is a Sunshine Request. Please send to me the following information:

Time Period: from April 15th, 2011 through May 30th, 2011

Subject Matter: The Commonwealth Club program of May 11th, 2011 on Golden Gate Park. Content should include but is not limited to subject matter of the panel, information or comments on panel members, Recreation and Parks Department participation, Recreation and Park Commission participation, and all other issues related to this program.

Documents requested: All emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate Park.

Correspondence: Should include all emails, correspondence, reports, proposals, notes, letters, memoranda, and other documents pertaining to the Commonwealth Club program of May 11th, 2011 on Golden Gate Park between, to, and or from the following persons:

- Recreation and Park Department and Commission: Sarah Ballard, Mark Buell, Phil Ginsburg, Elton Pon, Staci White,
- Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

##

From: Sarah Ballard/RPD/SFGOV
To: Olive Gong/RPD/SFGOV@SFGOV
Cc: Elton Pon/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV
Date: 06/06/2011 12:03 PM
Subject: Re: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

I have nothing.

Sarah Ballard
Director of Policy and Public Affairs
San Francisco Recreation and Parks
McLaren Lodge
Golden Gate Park
501 Stanyan Street
San Francisco, CA 94117

p- 415-831-2740
f- 415 -831-2096
www.parks.sfgov.org

From: Olive Gong/RPD/SFGOV
To: Sarah Ballard/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Elton Pon/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV
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To: Olive.gong@sfgov.org
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Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

##

From: Nicholas Kinsey/RPD/SFGOV
To: Olive Gong/RPD/SFGOV@SFGOV
Cc: bdennis@sfbotanicalgarden.org, Cristina Garcia/RPD/SFGOV@SFGOV, Dawn Kamalanathan/RPD/SFGOV@SFGOV, Elaine Sullivan/RPD/SFGOV@SFGOV
Date: 06/10/2011 04:42 PM
Subject: Re: Sunshine Request-- RPD memos on Commonwealth Club program of May 11th, 2011

i do not have anything responsive

Thanks,

Nick

Nicholas A. Kinsey
Assistant Director of Property and Concession Management
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan Street
San Francisco, CA 94117

Tel. (415) 831-2774

Fax (415) 831-2099

From: Olive Gong/RPD/SFGOV
To: bdennis@sfbotanicalgarden.org, Dawn Kamalanathan/RPD/SFGOV@SFGOV, Nicholas Kinsey/RPD/SFGOV@SFGOV, Elaine Sullivan/RPD/SFGOV@SFGOV
Cc: Cristina Garcia/RPD/SFGOV@SFGOV
Date: 06/10/2011 04:40 PM
Subject: Sunshine Request-- RPD memos on Commonwealth Club program of May 11th, 2011

Hi Folks,

Do you have any documents in response to the request below?

Thank you for your help,
Olive

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

— Forwarded by Olive Gong/RPD/SFGOV on 06/10/2011 04:32 PM —

From: George Wooding <mother_ed@bigeds.com>
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

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- Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

|||

From: Brent Dennis <brendennis@sfgov.org>
To: "Olive.Gong@sfgov.org" <Olive.Gong@sfgov.org>, "Dawn.Kamalanathan@sfgov.org" <Dawn.Kamalanathan@sfgov.org>, "Nicholas.Kinsey@sfgov.org" <Nicholas.Kinsey@sfgov.org>, "Elaine.Sullivan@sfgov.org" <Elaine.Sullivan@sfgov.org> "Cristina.Garcia@sfgov.org" <Cristina.Garcia@sfgov.org>
Cc:
Date: 06/10/2011 05:37 PM
Subject: RE: Sunshine Request-- RPD memos on Commonwealth Club program of May 11th, 2011

Olive, nothing from me, good luck. Have a very nice weekend, brent

-----Original Message-----

From: Olive.Gong@sfgov.org [mailto:Olive.Gong@sfgov.org]
Sent: Friday, June 10, 2011 4:40 PM
To: Brent Dennis; Dawn.Kamalanathan@sfgov.org;
Nicholas.Kinsey@sfgov.org; Elaine.Sullivan@sfgov.org
Cc: Cristina.Garcia@sfgov.org
Subject: Sunshine Request--- RPD memos on Commonwealth Club
program of May 11th, 2011

Hi Folks,

Do you have any documents in response to the request below?

Thank you for your help,
Olive

.....
.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

----- Forwarded by Olive Gong/RPD/SFGOV on 06/10/2011 04:32
PM -----

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To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
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Re: Immediate Disclosure Request: RPD memos on Commonwealth
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* Recreation and Park Department and
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* Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,
George Wooding

##

From: Elaine Sullivan/RPD/SFGOV
To: Olive Gong/RPD/SFGOV@SFGOV
Date: 06/13/2011 11:34 AM
Subject: Re: Sunshine Request-- RPD memos on Commonwealth Club program of May 11th, 2011

Hello!

Since I don't actually know what the Commonwealth Club meeting was about, I'm pretty sure I don't have anything related to it.

See you around,

Elaine Sullivan
City Hall Fellow
San Francisco Department of Recreation and Parks
501 Stanyan Street
San Francisco, CA 94117
(415)-831-6357
sfrecpark.org

Exhibit 2

RECREATION AND PARK DEPARTMENT

Record Retention and Destruction Policy

The Recreation and Park Department Record Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule.

This policy covers all records and documents, regardless of physical form or characteristics, which have been made or received by the Recreation and Park Department in connection with the transaction of public business.

PART I: POLICY AND PROCEDURES

A. RETENTION POLICY

The Recreation and Park Department shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part II. The records of the Recreation and Park Department shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- Permanent records. Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed and special measures are followed. Under Administrative Code Section 8.4, once microfilmed, or may be placed on an optical imagery system, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of this Department. An example of permanent records includes but is not limited to official records of commission action.
- Essential records. Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Administrative Code Section 8.9. An example of essential records includes, but is not limited to, the Department Employee Handbook.

Category 2: Current Records. Current records are records which for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Examples of current records include lease files and personnel files. Current records shall be retained as follows:

- Where retention period specified by law. Where federal, state, or local law prescribes a definite period of time for retaining certain records, the Recreation and Park Department will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are Family Medical Leave Act Records and Workers' Compensation Records.
- Where no retention period specified by law. Where no specific retention period is specified by law, the department must specify the retention period for those records that the department is required to retain. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period. Examples of current records include but are not limited to invoices for purchases of supplies and budget documents.

Category 3: Storage Records. Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records.

Category 4: No Retention Required. Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include materials and documents generated for the convenience of the person generating them, draft documents (other than draft of agreements subject to disclosure pursuant to Administrative Code Section 67.24(a)) which have been superseded by subsequent versions, or rendered moot by departmental action, and duplicate copies of records that are no longer needed. Specific examples include calendars, telephone message slips, miscellaneous correspondence not requiring follow-up or departmental action, notepads, e-mails that do not contain information required to be retained under this policy, and chronological files. With limited exceptions, no specific retention requirements are assigned to documents within this category. Instead, it is up to the originator or recipient to determine when the documents business utility has ended.

B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for

the periods prescribed for substantially similar records. Current or storage records may be destroyed five years after they were created if they have served their purpose and are no longer required for any public business or public purpose, and destruction of the record has been approved by the Controller (for records pertaining to financial matters), the City Attorney (for records have legal significance) and the Retirement Board (for payroll checks, time cards and relate documents).

C. STORAGE OF RECORDS

Records may be stored in the Recreation and Park Department's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Recreation and Park Department's office space or equipment include active chronological files, research and reference files, legislative drafting files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the Recreation and Park Department's office space or equipment, may be sent to the City's off-site storage facility or maintained in the Department's storage facility.

D. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Recreation and Park Department but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

Correspondence not requiring follow-up	4	None			
Correspondence, draft	4	None			
Emergency Response Plan	2	Later of 2 years or until superceded	X		
Employee Handbook	1	Until superceded	X		
Fax Transmittal Sheets	4	None			
Financial Records, miscellaneous	4	None	X		
General Manager Reports	2	5 years	X		
Incident Reports	4	None			
Journals/Magazines/Catalogs	2	Until superceded	X		
Legal Advice	4	None			
Legislative Drafts	4	None			
Memoranda, miscellaneous	2	5 years or until superceded	X		
Memoranda, policy/decisional	2	Later of 2 years after applicable fiscal year	X		
Payables (Invoices)	2	2 years	X		
Publications, reports created by department	2	For life of permit, minimum of 2 years	Located at Log Cabin - permits and reservations office		
Permit Application and Issuance Records	2	3 years	X		
Revolving Funds Records	1	Permanent	For 3 years	After 3 years	
Settlement Agreements	2	2 years	X		
Telephone Logs	2	Later of 2 years after applicable fiscal year	X		
Work Orders and Payments	2	2 years	X		

COMMISSION RECORDS						
Agendas, Notices and Minutes of Commission Meetings	1	Permanent	X			
Audio/Video recording of meetings of policy bodies	1	Permanent	For 2 years	After 2 years		Required by Admin. Code §67.14
Commission Correspondence	2	2 years	X			
Commission Files	2	10 years	X			
Motions and Resolutions	1	Permanent	X			
CONTRACT/GRANT RECORDS						
Bond Documents	2	Duration of Bond	X			
Contracts/Agreements/MOUs	2	2 years after life of agreement ¹	X			
Contract correspondence	2	2 years after life of the agreement	X			
Construction Plans	2	Later of 2 years or until superseded	X			Admin. Code §67.24(a)
Exchanged Drafts of Agreements	2	2 years	X			
Lease Files	2	3 years after expiration	X			
Professional Services Contracts	2	2 years after life of agreement	X			
Purchase Orders	2	2 years	X			
Regulations	1	Current until superseded	X			
Requests for Proposals (RFPs) and Request for Qualifications (RFQs);	2	2 years	X			Admin. Code §67.24(c)

¹ Unless longer retention period required by state or federal law, in which case the type of agreement and applicable retention period should be listed.

Responses to RFPs and RFQs					
REP Scoring Records	2	2 years	X		
PERSONNEL/HR RECORDS					
ADA Request for Reasonable Accommodation Report	2	5 years	X		
Affirmative Action Plan	2	5 years	X		
Discrimination Complaints	2	5 years	X		
Employee Accident/Incident Reports	2	7 years	X		Title 8, Cal. Code of Regulations, Section 10102
Employment Applications/Resumes	2	2 years	X		
Ergonomic Records	2	2 years	X		Required by Fair Labor Standards Act §11(c)
Family Medical Leave Act Records	2	5 years	X		
Payroll Records	2	5 years	X		
Personnel Files	2	5 years after date of separation	X		
Sexual Harassment Complaints	2	5 years	X		
Time Rosters*	2	5 years	X		
Time Sheets	2	5 years	X		29 CFR 1904.6
Workers' Compensation Records	2	5 years	X		

*These are no longer generated. Prior records will be retained for 5 years.

Exhibit 3

From: Olive Gong/RPD/SFGOV R
To: Garrett Chatfield/ETHICS/SFGOV@SFGOV
Date: Friday, December 09, 2011 03:39PM
Subject: Followup for: #11049_George Wooding v Recreation & Park Department

Dear Mr. Chatfield,

Attached below are the emails you had requested in our conversation earlier today.

Let me know if I can be of any further assistance, and have a good weekend!

Olive Gong
Custodian of Records

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

(See attached file: emails from staff.pdf)

From: Olive Gong/RPD/SFGOV
To: SOTF/SOTF/SFGOV@SFGOV
Date: 10/26/2011 08:36 AM
Subject: #11049_George Wooding v Recreation & Park Department

Dear SOTF,

This note is just to follow up with a question that was asked yesterday at the hearing. You had asked for the date of when I asked staff for archived tapes, I didn't recall the exact date, only that it was the very next day, after I was instructed to do so by the SOTF. The attached email confirms that the date the request was made was the day after the Sept 27, 2011 hearing, on Sept 28, 2011

I had forwarded SOTF's request both verbally and by email to Sarah Ballard, who had stated to me that day (Sept 28, 2011) that she would be the person contacting the IT departments for the backup tapes.

Respectfully,
Olive Gong

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

(See attached file: request for archives.pdf)

Attachments: Save All to a Lotus Quickr Place...

request for archives.pdf | Save to a Lotus
Quickr Place...

emails from staff.pdf | Save to a Lotus Quickr
Place...



SOTF request followup
Olive Gong to: Sarah Ballard

10/03/2011 10:40 AM

Hi Sarah,

Just following up with the SOTF request, I will need to return for another compliance meeting next Tuesday, Oct 11. Please let me know if we have additional responsive documents for Mr. Woodling.

Thanks,
Olive

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

----- Forwarded by Olive Gong/RPD/SFGOV on 10/03/2011 10:33 AM -----

From: Olive Gong/RPD/SFGOV
To: Sarah Ballard/RPD/SFGOV@SFGOV
Date: 09/28/2011 02:09 PM
Subject: SOTF request

Hi Sarah,

The SOTF asked us to request emails from both our IT division and also the City's Dept of Technology.

also, for your review:

J:\Elaine Docs\GGP Binder for May 11 2011 Meeting

Mr. Woodling's request below.

Thanks,
Olive

From: George Woodling <mother_ed@blgeds.com>
To: Olive.gong@sfgov.org
Date: 06/03/2011 12:35 PM
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

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- Commonwealth Club: Officers, staff, program directors, and volunteers

Please let me know when this information will be available. I would prefer this to be in electronic format. Please let me know if there will be any costs associated with this request.

Sincerely,

George Wooding

Date: September 27, 2011

Item No. 5

File No. 11049

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

<input checked="" type="checkbox"/>	George Wooding v Recreation and Parks Department
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Completed by: Chris Rustom

Date: Sept. 22, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING v RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not 'records' as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

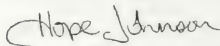
The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe)
Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

Excused: Knee,
Absent: Snyder, Chan, Knoebber

A handwritten signature in black ink that reads "Hope Johnson". The signature is written in a cursive, flowing style.

Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

8/18/2011

Chris Rustoin
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

Re: Complaint #11049 George Wooding v Recreation and Park Department

Dear Mr. Rustoin,

This letter is in response to the Order of Determination, dated August 8, 2011 for Complaint #11049, filed by George Wooding against the Recreation and Park Department.

The Order of Determination included a request to release records, however, we do not have any records in response to the request.

If I can be of further assistance to the Task Force, please do not hesitate to contact me.

Sincerely,


Olive Gong
Custodian of Records, SFRPD

Date: Oct. 10, 2011

Item No. 3
File No. 11049

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: Oct. 7, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING v RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsburg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

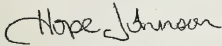
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The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe)

Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

Excused: Knee,
Absent: Snyder, Chan, Knoebber

A handwritten signature in cursive script that reads "Hope Johnson".


Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threat, Deputy City Attorney



George Wooding
<mother_ed@bigeds.com>
10/05/2011 06:21 PM

To: chris.rustom@sfgov.org
cc: sotf@sfgov.org, hopeannette@earthlink.net
bcc:
Subject: Fwd: Re Complaint #11049

History:  This message has been replied to.

Hi Chris,

What is the time and date of our upcoming compliance meeting?

I consider the forwarded RPD documents to be non-responsive as they have absolutely nothing to do with complaint 11049.

Best Regards,

George Wooding

Begin forwarded message:

From: Olive.Gong@sfgov.org
Date: October 5, 2011 12:34:43 PM PDT
To: George Wooding <mother_ed@bigeds.com>
Cc: sotf@sfgov.org
Subject: Re Complaint #11049

Dear Mr. Wooding,

We recently came across some documents that were created by the intern who is no longer with the department. We believe these are responsive to your request dated June 3, 2011.

Regards,
Olive Gong

.....
Olive Gong
San Francisco Recreation and Park Department
McLaren Lodge
501 Stanyan St., SF CA 94117
415.831-2708 direct
415.831-2096 fax
olive.gong@sfgov.org email

Reduce, Reuse, Recycle

(See attached file: GGP (since 2000) Projects.pdf)(See attached file: 02 GGP Overview.pdf)(See attached file: 03 Golden Gate Park Handout_final draft.pdf)(See attached file: 04 Briefing Comm Buell GGP park investments.pdf)(See attached file: 05 Briefing Comm Mark Buell Playfields Initiative (1).pdf)(See attached file: 06 Briefing Commissioner Buell PUC Recycled Water Talking Points.pdf)
(See attached file: 07 Food Cart Project in Golden Gate Park.pdf)(See attached file: 08 Stow Lake Ortega Info.pdf)(See attached file: 09 April GGParkMONTHLYReportAPRIL.pdf)(See attached file: 09 February GGParkMONTHLYReportFeb.pdf)(See attached file: 09 March GGParkMONTHLYReportMarch.pdf)(See attached file: 00 TABLE OF CONTENTS.pdf)



GGP (since 2000) Projects.pdf 02 GGP Overview.pdf 03 Golden Gate Park Handout_final draft.pdf



04 Briefing Comm Buell GGP park investments.pdf 05 Briefing Comm Mark Buell Playfields Initiative (1).pdf



06 Briefing Commissioner Buell PUC Recycled Water Talking Points.pdf 07 Food Cart Project in Golden Gate Park.pdf



08 Stow Lake Ortega Info.pdf 09 April GGParkMONTHLYReportAPRIL.pdf 09 February GGParkMONTHLYReportFeb.pdf



09 March GGParkMONTHLYReportMarch.pdf 00 TABLE OF CONTENTS.pdf

Date: Oct. 25, 2011

Item No. 7

File No. 11049

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: Oct. 20, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

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**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING v RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

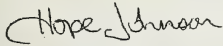
This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe)

Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

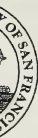
Excused: Knee,
Absent: Snyder, Chan, Knoebber

A handwritten signature in cursive script that reads "Hope Johnson".

Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney





ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

Date: February 1, 2013

To: Sarah Ballard, Respondent
Mark Buell, Respondent
Olive Gong, Respondent
George Wooding, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE – Show Cause Hearing – Ethics Complaint 15-111205**

On December 5, 2011, the Sunshine Ordinance Task Force (“Task Force”) delivered a referral letter and an Order of Determination (“Order”) to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance section 67.34, San Francisco Charter sections 15.105, C3.699-11(5), and C3.699-13(c) and (d), as to Respondents Phil Ginsburg and Sarah Ballard. The referral was also made pursuant to Sunshine Ordinance, section 67.30(c), San Francisco Charter sections 15.105 and C3.699-11(5), and C3.699-13(c) and (d) as to Respondents Mark Buell and Olive Gong.

The Task Force held a hearing on the matter on July 26, 2011. The complaint involved a request for emails and other documents between certain San Francisco Recreation and Parks Department employees and Commonwealth Club representatives that were related to a Commonwealth Club presentation at which employees of the San Francisco Recreation and Parks Department were to attend.

The Task Force concluded that the emails were public documents and should have been released. A written Order was issued on August 8, 2011, stating that the Task Force found that Mark Buell, Phil Ginsberg, Sarah Ballard, and Olive Gong violated Sunshine Ordinance section 67.25 for failure to respond to the Immediate Disclosure Request, section 67.26 for not keeping withholding to a minimum, section 67.27 for failure to justify withholding, and section 67.21(c) for not assisting the requestor. The Order also ordered that the agency release the requested records and appear at the Compliance and Amendments Committee meeting on September 13, 2011.

Because Mr. Ginsberg is a department head and the complaint alleged a violation of Sunshine Ordinance section 67.34, his matter was bifurcated and will be handled under the Ethics Commission Regulations for Violations of the Sunshine Ordinance (“Regulations”), Chapter Three, in a separate hearing. Sarah Ballard, Mark Buell, and Olive Gong are not department heads or elected officials.

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter as to Respondents Sarah Ballard, Mark Buell, and Olive Gong will be heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"). Staff has scheduled this matter to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013**, in Room 400 in City Hall.

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (*See* Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondents nor the Complainant are required to attend. However, if any party fails to appear, and the Commission did not grant that party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

Each Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum, as well as a copy of the Regulations.

SUNSHINE ORDINANCE
TASK FORCE

2011 DEC -5 PM 1:21

SAN FRANCISCO
ETHICS COMMISSION



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

BY _____ December 5, 2011

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Sunshine Complaint No. 11049, George Wooding v. Recreation and Parks
Department
Notice and Referral for Willful Failure and Official Misconduct**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against Phil Ginsburg and Sarah Ballard of the San Francisco Recreation and Parks Department for failure to comply with the Order of Determination ("Order") issued on August 8, 2011 in Sunshine Complaint No. 11049, George Wooding v. Recreation and Parks Department.

This willful failure and official misconduct finding is noticed for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct";
- (2) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (3) San Francisco City Charter Sections C3.699-11(5) and C3.699-13 (c) and (d).

Additionally, the Task Force hereby refers Mark Buell, President of the Recreation and Parks Commission, and Olive Gong of the Recreation and Parks Department for failure to comply with the Order. These referrals are made pursuant to:

- (1) Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts";

- (4) (2) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (5) San Francisco City Charter Sections C3.699-11(5) and C3.699-13 (c) and (d).

Background

George Wooding filed a complaint with the Task Force on June 22, 2011 alleging the Recreation and Parks Department failed to provide records responsive to two document requests, one dated June 3, 2011 and another dated June 10, 2011.

Task Force Hearings on Complaint

On July 26, 2011, the Task Force held a hearing on the complaint. The Task Force found respondents in violation of the Sunshine Ordinance and ordered disclosure of the requested records no later than August 15th. A description of the hearing, violations found, and the Task Force decision are described in the attached Order.

Mr. Wooding subsequently requested respondents review Recreation and Parks Department back up files for the improperly deleted email correspondence. Respondent Olive Gong agreed to accommodate the request, and the matter was continued by the Task Force.

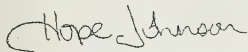
On October 11, 2011, the Task Force's Compliance and Amendments Committee held a hearing to monitor compliance with the Order and agreement to review back up files for responsive records. Ms. Gong had provided Mr. Wooding with nonresponsive department promotional materials she said were discovered in files created by an intern no longer working with the Recreation and Parks Department.

Although the original records request had been submitted four months prior to the Committee hearing, Ms. Gong requested additional time for the technology departments to review back up files. She could not provide a reason the technology departments required additional time.

The Compliance and Amendments Committee referred the matter to the full Task Force regularly scheduled meeting on October 25, 2011 for action on the failure to comply.

On October 21, 2011, two business days before the Task Force was to consider action on the failure to comply with its Order issued on August 8, 2011, respondents finally produced responsive records to Mr. Wooding.

Thank you for your attention to this matter. A copy of the Order is attached. Please contact the Task Force Administrator at soff@sfgov.org or (415) 554-7724 for any additional information

A handwritten signature in cursive script that reads "Hope Johnson".

Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney

SUNSHINE ORDINANCE
TASK FORCE

2011 DEC -5 PM 1:21

SAN FRANCISCO
ETHICS COMMISSION



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ORDER OF DETERMINATION

BY _____ August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING v RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

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On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe)
Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

Excused: Knee,
Absent: Snyder, Chan, Knoebber

A handwritten signature in cursive script that reads "Hope Johnson".

Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: George Wooding, Complainant
Mark Buell, Respondent
Phil Ginsburg, Respondent
Sarah Ballard, Respondent
Olive Gong, Respondent
Jerry Threet, Deputy City Attorney



Edwin M. Lee, Mayor
Phillip A. Ginsburg, General Manager

Chairperson Hur and Honorable Commissioners
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

Re: Show Cause Hearing – Ethics Complaint 15-111205
Respondents Sarah Ballard, Mark Buell, and Olive Gong

February 20, 2013

Dear Chairperson Hur and Honorable Commissioners:

We write on behalf of Respondents Sarah Ballard, Recreation and Park Commission President Mark Buell, and Olive Gong of the Recreation and Park Department (RPD) with regard to the above-referenced matter. As Executive Director St. Croix's February 1, 2013 Report and Recommendation correctly found that RPD General Manager Phil Ginsburg did not violate the Sunshine Ordinance in this case, so too should the Ethics Commission conclude that there is no factual or legal basis to find that Respondents Ballard, Buell, or Gong violated the Ordinance.

In December 2011, the Sunshine Ordinance Task Force ("Task Force") notified the Ethics Commission of "willful failure and official misconduct findings" against Phil Ginsburg and Sarah Ballard¹ for failure to comply with its August 8, 2011 Order of Determination, and also referred Recreation and Park Commission President Mark Buell and RPD staffer Olive Gong for "failure to comply" with the Order. In that Order, the Task Force found these four individuals violated the following sections of the Sunshine Ordinance: (1) Section 67.25 "for failure to respond to the Immediate Disclosure Request before the end of the next business day," (2) Section 67.26 "for not keeping withholding to a minimum," (3) Section 67.27 "for failure to justify the withholding of records," and (4) Section 67.21(c) "for not assisting the requestor."

The facts of this case are straightforward and belie the Task Force's Order. Mr. Wooding submitted a public records request to RPD for correspondence between five RPD personnel and the Commonwealth Club. Upon receiving Mr. Wooding's request, RPD personnel promptly searched their records and did not locate any responsive records. Indeed, in accordance with RPD's Record Retention and Destruction Policy, any potentially responsive records had already been deleted before RPD received or knew of Mr. Wooding's request. Under that Policy, "correspondence not requiring follow-up" constitute "Category 4" records that RPD need not retain. (Exhibit A.) RPD promptly informed Mr. Wooding that it did not have any responsive records. As the facts make clear, RPD did not violate any of the four Sunshine Ordinance sections cited in the Task Force's Order. The Commission should dismiss the complaint.

¹ As explained in Executive Director St. Croix's February 1, 2013 memorandum, the referral of this matter as to Mr. Ginsburg was bifurcated and will be handled separately under Chapter Three of the Commission's Regulations for Violations of the Sunshine Ordinance. RPD submitted its response for the Ginsburg matter under separate cover on February 15, 2013.

FACTUAL BACKGROUND

A. June 3, 2011 Immediate Disclosure Request

On Friday June 3, 2011, Mr. Wooding submitted an "immediate disclosure request" to Olive Gong, custodian of records for RPD. The request asked for correspondence related to a May 11, 2011 Commonwealth Club forum between, to, and/or from five individuals (Mr. Ginsburg, President Buell, Ms. Ballard, and two other RPD employees) and representatives of the Commonwealth Club. Because the request was submitted on a Friday, the Department's response was due the next business day, Monday June 6, 2011.

Upon receipt of Mr. Wooding's request on June 3, Ms. Gong immediately forwarded the request that same day to Ms. Ballard and Margaret McArthur, Recreation and Park Commission Secretary, as well as the other persons named in the request. Ms. Ballard promptly searched her email account, and did not locate responsive records. At the time she conducted the search, she had already deleted any emails that may have been responsive to the request in accordance with RPD's Record Retention and Destruction Policy. These deletions occurred before Ms. Ballard or RPD had received or knew of the request. On Monday June 6, Ms. Ballard informed Ms. Gong that she did not have any records responsive to the request.

As to President Buell, upon receiving Ms. Gong's inquiry, RPD Commission Secretary Margaret McArthur searched the RPD Commission's general email account² and did not locate any responsive records. She also called President Buell and asked him to search his personal email account for responsive records. President Buell informed Ms. McArthur that he did not have any responsive records.³ Like Ms. Ballard, at the time President Buell conducted his search, he had already deleted any emails that may have been responsive to the request in accordance with the Department's Record Retention and Destruction Policy. These deletions occurred before President Buell or RPD had received or knew of the request. Accordingly, Ms. McArthur informed Ms. Gong on Monday June 6 that President Buell did not have any responsive records.

The other RPD staffers named in Mr. Wooding's request similarly responded to Ms. Gong that they did not have responsive records. On Wednesday June 8, Ms. Gong responded to Mr. Wooding by email stating that RPD did not have any records responsive to his request. Ms. Gong was two days late in responding because she had been waiting for one more RPD staffer to inform her whether he had responsive records, and he did not get back to her until June 8.

B. Mr. Wooding's June 9 and June 10 Follow-Up Emails

On June 9, 2011, Mr. Wooding emailed Ms. Gong stating that her June 8 response was "unclear" and asking her to "identify the staff who searched and what specific documents were reviewed in their search."⁴ That same day, Ms. Gong responded again stating that she did not have any responsive records.

² RPD maintains a single SFGOV email account for correspondence to the Commission as a whole, recpark.commission@sfgov.org, which is maintained by the Commission Secretary.

³ We note that the Executive Director's February 1, 2013 Report and Recommendation as to the complaint against Mr. Ginsburg incorrectly states at page 7 that Ms. McArthur "did not think to ask Mr. Buell to search his personal email account for responsive documents." That is not correct. Ms. McArthur and President Buell both recall that Ms. McArthur asked him to search his email account, and that he did so but did not locate any responsive records.

⁴ To the extent Mr. Wooding's June 9th request asked RPD to answer questions and/or generate a list of names, it amounted to an interrogatory, not a request for public records. "A request that a department create a response to a request for information or answer a series of questions is not

The next day, June 10, 2011, Mr. Wooding emailed Ms. Gong an "immediate request to find out how the RPD decided (process) that there were no documents that would adequately respond to my sunshine requests." He asked for the names of all people asked, the question asked, and the response from each person, including "verbal as well as written communications."⁵ Ms. Gong spoke with Mr. Wooding by phone and told him there were no responsive records. In an abundance of caution, Ms. Gong also sent inquiries on June 10, 2011 to other RPD staffers who were not named in Mr. Wooding's request to ask if they might have any responsive records; they did not. On July 20, 2011, Ms. Gong provided Mr. Wooding with copies of emails that she had sent RPD staff asking if they had responsive records, and their responses that they did not.

C. Sunshine Ordinance Task Force Proceedings

On June 22, 2011, Mr. Wooding filed his Task Force complaint. On July 19, 2011, Mr. Wooding submitted to the Task Force five emails he had obtained from an un-named, non-City third party (presumably someone connected with the Commonwealth Club): (1) an April 20, 2011 email from RPD staffer Sarah Ballard's office email account to a Ross Lawley of the Commonwealth Club, (2) an April 20, 2011 email from Ms. Ballard's office email account to a Kerry Curtis of the Commonwealth Club, (3) an April 25, 2011 email from Recreation and Park Commission President Mark Buell's personal email account to a Greg Dalton of the Commonwealth Club, and (4) an April 26, 2011 email from Kerry Curtis to Mark Buell's personal email account, in which Mr. Ginsburg was copied as a "cc" to his personal email account, plus a fifth email between two persons, neither of whom were City officials or employees at the time.

On a July 25, 2011 letter to the Task Force, Ms. Gong explained that at the time Mr. Wooding submitted his June 3 public records request, the emails Mr. Wooding had obtained from a non-City source had already been deleted by RPD personnel in accordance with the Department's Record Retention and Destruction Policy. As Ms. Gong explained, the emails fell under "Category 4" of the Department's Policy, a category of records that the Department is not required to retain. Specifically, the emails constituted "correspondence not requiring follow-up," which the Policy designates as "Category 4" records. (See Exhibit A.)

Notwithstanding Ms. Gong's explanation that RPD did not have any responsive records at the time of Mr. Wooding's request, and that any potentially responsive records had already been deleted at the time of his request in accordance with RPD's Record Retention and Destruction Policy, the Task Force issued its order finding that Mr. Ginsburg, Ms. Gong, Ms. Ballard and Mr. Buell had violated the following sections of the Sunshine Ordinance: (1) Section 67.25 "for failure to respond to the Immediate Disclosure request before the end of the next business day," (2) Section 67.26 "for not keeping withholding to a minimum," (3) Section 67.27 "for failure to justify the withholding of records," and (4) Section 67.21(c) "for not assisting the requestor."

Following the Task Force's Order, although RPD was under no legal obligation to do so,⁶ RPD, as a courtesy, asked its IT personnel, as well as the City's Department of Technology, to search electronic

public records request, and neither the Public Records Act nor the Sunshine Ordinance requires the department to reply to a series of written questions or interrogatories." (City Attorney's Good Government Guide, 2010-11 edition, at p. 81.)

Mr. Wooding's request for "verbal communications" was also beyond the scope of the Public Records Act and Sunshine Ordinance, which apply only to "public records," which is defined as "writing." (Cal. Govt. Code § 6252(c).)

As the City Attorney's Good Government Guide explains, "departments need not search their back-up electronic files in response to a public records request. ... Neither the Public Records

back-up tapes for deleted emails that may be responsive to Mr. Wooding's request. The Department of Technology ultimately located deleted emails responsive to Mr. Wooding's request, which Ms. Gong provided to Mr. Wooding on October 21, 2011.

LEGAL ISSUES

This Show-Cause Hearing is governed by Chapter 2 of the Commission's Regulations. Accordingly, the Commission must conclude that, "based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance." (Chapter 2, Section II(D (2).) That standard is easily met here. As explained below, the evidence clearly establishes that the Respondents did not violate any of the four provisions cited in the Task Force's Order.

A. The Respondents Did Not Violate Section 67.25

The Task Force Order of Determination found Respondents Ballard, Buell and Gong in violation of Section 67.25 of the Sunshine Ordinance "for failure to respond to the Immediate Disclosure Request before the end of the next business day." That section provides that an Immediate Disclosure Request must be responded to "no later than the close of business on the day following the day of the request." (S.F. Admin. Code § 67.25.)

Because Mr. Wooding submitted his request on Friday June 3, 2011, the Department's response was due on Monday June 6, 2011. Ms. Ballard and President Buell (through Commission Secretary Margaret McArthur) timely informed Ms. Gong on Monday June 6 that they had no records responsive to Mr. Wooding's request. As the Executive Director's Report correctly concluded as to Mr. Ginsburg, Ms. Ballard and President Buell "made a good faith effort to timely respond to the requester as required by the Ordinance." (Director's Report, p. 8). Given Ms. Ballard and President Buell's quick and conscientious review of their records, there is no basis to conclude their conduct constitutes a violation of Section 67.25.

Mr. Wooding's June 3 "immediate disclosure" request asked for correspondence to/from five different individuals. Ms. Gong immediately contacted those five individuals on June 3 to ask if they had responsive records. Ms. Gong sent RPD's response to Mr. Wooding two days late on June 8 because she was waiting for one more RPD staffer (not one of the named Respondents in this matter) to respond to her inquiry. Because Mr. Wooding's request was not "simple, routine, or otherwise readily answerable," RPD could have invoked the time deadlines governing standard requests – an initial 10-day period for response, plus a possible extension of up to 14 additional days. (City Attorney's Good Government Guide, 2010-11 at p. 84.)⁷ Given the demanding nature of Mr. Wooding's request, and Ms. Gong's prompt and diligent effort to locate responsive records from the five relevant persons, her tardiness by two days should not be construed as a violation of Section 67.25 that warrants enforcement action by this Commission.

B. Section 67.26 Does Not Apply Here

The Task Force Order also found that the Respondents violated Section 67.26 of the Sunshine Ordinance "for not keeping withholding to a minimum." That section provides that a record shall not "be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute." (S.F. Admin. Code §

Act nor the Sunshine Ordinance requires the City to search the trash for such records, whether paper or electronic." (Good Government Guide, 2010-11 edition, at p. 89.)

⁷ The Good Government Guide explains that "the requester's designation of a request as an immediate disclosure request does not automatically make it so," and "[f]or more extensive or demanding requests, the maximum deadlines for responding to a request apply." (p. 84.)

67.26.) As previously noted, Ms. Ballard, President Buell and Ms. Gong did not withhold records in their possession. Rather, they had no responsive records. Thus, Section 67.26's limitations as to withholding and redacting records are simply inapplicable here and there is no basis to find a violation of this provision.

C. Section 67.27 Also Does Not Apply Here

The Task Force Order also found that the Respondents violated Section 67.27 of the Sunshine Ordinance "for failure to justify the withholding of records." That section states that "withholding of information" must be justified in writing with citation to the specific statutory authority that exempts the requested record(s) from disclosure. Again, as with Section 67.26 discussed above, Section 67.27's requirements are inapplicable here because RPD did not "withhold" any records. Accordingly, there is no basis to find a violation of this provision either.

D. Respondents Did Not Violate Section 67.21(c)

Finally, the Task Force Order found that Ms. Ballard, President Buell and Ms. Gong violated Section 67.21(c) of the Sunshine Ordinance "for not assisting the requestor." Specifically, the Task Force Order stated that RPD "should have told the requestor that copies could be available at the Commonwealth Club."

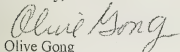
Section 67.21(c) provides, in relevant part, that a custodian of records "when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person." (S.F. Admin. Code § 67.21(c) [emphasis added].) As the City Attorney's Good Government Guide explains, Section 67.21(c) requires departments to help requestors by directing them to other City departments that may have responsive records:

If a requester has addressed a request to the wrong department, or if the department that received the request knows that another department may have responsive records, the department that received the request typically should inform the requester of the other department(s) that may have responsive records.
Admin. Code § 67.21(c).

(Good Government Guide, p. 82 [emphasis added].) The only reasonable interpretation of the phrase "proper office or staff person" in Section 67.21(c) is that it means City offices and City staff. With narrow exceptions not applicable here, private sector entities have no legal obligation to provide records to members of the public. Hence, by definition, a private sector entity is not a "proper" office or staff person within the meaning of the Ordinance. To our knowledge, this is the first time in the history of the Public Records Act or the Sunshine Ordinance that someone has read into the law a legal obligation to direct a requester to a non-public entity with no legal obligation to respond to a request. It would make no sense to require City departments to refer requestors to private entities like the Commonwealth Club given that such entities are under no legal obligation to disclose their records. Hence, there is no basis for finding that the Respondents violated this provision.

For the foregoing reasons, the Recreation and Park Department, on behalf Respondents Ballard, Buell and Gong, respectfully requests that the Ethics Commission find that the Respondents did not violate the Sunshine Ordinance, and dismiss the complaint forthwith.

Sincerely,



Olive Gong
Custodian of Records

Attachments: Exhibit A (RPD Record Retention and Destruction Policy)

RECREATION AND PARK DEPARTMENT Record Retention and Destruction Policy

The Recreation and Park Department Record Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule.

This policy covers all records and documents, regardless of physical form or characteristics, which have been made or received by the Recreation and Park Department in connection with the transaction of public business.

PART I: POLICY AND PROCEDURES

A. RETENTION POLICY

The Recreation and Park Department shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part II. The records of the Recreation and Park Department shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- **Permanent records.** Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed and special measures are followed. Under Administrative Code Section 8.4, once microfilmed, or may be placed on an optical imagery system, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of this Department. An example of permanent records includes but is not limited to official records of commission action.
- **Essential records.** Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Administrative Code Section 8.9. An example of essential records includes, but is not limited to, the Department Employee Handbook.

Category 2: Current Records. Current records are records which for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Examples of current records include lease files and personnel files. Current records shall be retained as follows:

- **Where retention period specified by law.** Where federal, state, or local law prescribes a definite period of time for retaining certain records, the Recreation and Park Department will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are Family Medical Leave Act Records and Workers' Compensation Records.
- **Where no retention period specified by law.** Where no specific retention period is specified by law, the department must specify the retention period for those records that the department is required to retain. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period. Examples of current records include but are not limited to invoices for purchases of supplies and budget documents.

Category 3: Storage Records. Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records.

Category 4: No Retention Required. Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include materials and documents generated for the convenience of the person generating them, draft documents (other than draft of agreements subject to disclosure pursuant to Administrative Code Section 67.24(a)) which have been superseded by subsequent versions, or rendered moot by departmental action, and duplicate copies of records that are no longer needed. Specific examples include calendars, telephone message slips, miscellaneous correspondence not requiring follow-up or departmental action, notepads, e-mails that do not contain information required to be retained under this policy, and chronological files. With limited exceptions, no specific retention requirements are assigned to documents within this category. Instead, it is up to the originator or recipient to determine when the documents business utility has ended.

B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for the periods prescribed for substantially similar records. Current or storage records may be destroyed five years after they were created if they have served their purpose and are no

longer required for any public business or public purpose, and destruction of the record has been approved by the Controller (for records pertaining to financial matters), the City Attorney (for records have legal significance) and the Retirement Board (for payroll checks, time cards and relate documents).

C. STORAGE OF RECORDS

Records may be stored in the Recreation and Park Department's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Recreation and Park Department's office space or equipment include active chronological files, research and reference files, legislative drafting files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the Recreation and Park Department's office space or equipment, may be sent to the City's off-site storage facility or maintained in the Department's storage facility.

D. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Recreation and Park Department but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

PART II
RECORD RETENTION AND DESTRUCTION SCHEDULE

TYPE OF RECORD	RETENTION CATEGORY [e.g., current, permanent]	RETENTION PERIOD			REMARKS/ DISPOSITION INSTRUCTION OR TRIGGER
		Total	Current *	Storage **	
GENERAL AND ADMINISTRATIVE RECORDS					
Administrative records, miscellaneous	2	2 years	X		
Advice Letters	2	Later of 2 years or until superceded	X		
Annual Reports	1	Permanent	3 years	After 3 years	
Audio/Video recordings not specified	2	2 years	X		
Audit Reports	1	Permanent	3 years	After 3 years	
Budget Files	2	2 years	X		
Calendars [other than department head]	4	None			
Calendar [department head]	4	2 years	X		
Chronological files	4	None			
Claims Files	2	Later of 2 years or until claim is disposed.	X		
Code Interpretations	2	Later of 2 years or until superceded	X		
Correspondence, miscellaneous	2	2 years	X		
* files located in house					
** files located in storage in house or off site					

Correspondence not requiring follow-up	4					
Correspondence, draft	4					
Emergency Response Plan	2		X	Later of 2 years or until superceded		
Employee Handbook	1		X	Until superceded		
Fax Transmittal Sheets	4			None		
Financial Records, miscellaneous	4		X	None		
General Manager Reports	2		X	5 years		
Incident Reports	4			None		
Journals/Magazines/Catalogs	2		X	Until superceded		
Legal Advice	4			None		
Legislative Drafts	4			None		
Memoranda, miscellaneous	2		X	5 years or until superceded		
Memoranda, policy/decisional	2		X	Later of 2 years after applicable fiscal year		
Payables (Invoices)	2		X	2 years		
Publications, reports created by department	2		Located at Log Cabin - permits and reservations office	For life of permit, minimum of 2 years		
Permit Application and Issuance Records	2		X	3 years		
Revolving Funds Records	1		For 3 years	Permanent	After 3 years	
Settlement Agreements	2		X	2 years		
Telephone Logs	2		X	Later of 2 years after applicable fiscal year		
Work Orders and Payments	2		X	2 years		

COMMISSION RECORDS						
Agendas, Notices and Minutes of Commission Meetings	1	Permanent	X			
Audio/Video recording of meetings of policy bodies	1	Permanent	For 2 years	After 2 years		Required by Admin. Code §67.14
Commission Correspondence	2	2 years	X			
Commission Files	2	10 years	X			
Motions and Resolutions	1	Permanent	X			
CONTRACT/GRANT RECORDS						
Bond Documents	2	Duration of Bond	X			
Contracts/Agreements/MOUs	2	2 years after life of agreement ¹	X			
Contract correspondence	2	2 years after life of the agreement	X			
Construction Plans	2	Later of 2 years or until superceded	X			Admin. Code §67.24(a)
Exchanged Drafts of Agreements	2	2 years	X			
Lease Files	2	3 years after expiration	X			
Professional Services Contracts	2	2 years after life of agreement	X			
Purchase Orders	2	2 years	X			
Regulations	1	Current until superceded	X			
Requests for Proposals (RFPs) and Request for Qualifications (RFQs);	2	2 years	X			Admin. Code §67.24(e)

¹ Unless longer retention period required by state or federal law, in which case the type of agreement and applicable retention period should be listed.

Responses to RFPs and RFO's						
RFP Scoring Records	2	2 years	X			
PERSONNEL/HR RECORDS						
ADA Request for Reasonable Accommodation Report	2	5 years	X			
Affirmative Action Plan	2	5 years	X			
Discrimination Complaints	2	5 years	X			
Employee Accident/Incident Reports	2	7 years	X			Title 8, Cal. Code of Regulations, Section 10102
Employment Applications/Resumes	2	2 years	X			
Ergonomic Records	2	2 years	X			Required by Fair Labor Standards Act §11(c)
Family Medical Leave Act Records	2	5 years	X			
Payroll Records	2	5 years	X			
Personnel Files	2	5 years after date of separation	X			
Sexual Harassment Complaints	2	5 years	X			
Time Rosters*	2	5 years	X			
Time Sheets	2	5 years	X			29 CFR 1904.6
Workers' Compensation Records	2	5 years	X			

*These are no longer generated. Prior records will be retained for 5 years.

February 14, 2013

To: Ethics Commission members: Beverly Hayon, Benedict Y. Hur, Esq., Dorothy S. Liu, Esq., Paul A. Renne, Esq., Jamiennne S. Studley, Esq.

From: George Wooding

Re: Ethics Commission Complaint 15-111205. Recommendation, For ^{BY} Mark Buell, Sarah Ballard & Olive Gong.

This is a case about about the RPD, A public agency, abusing the first amendment free speech rights of private citizens and then trying to hide their subterfuge by deliberately deleting all public records relating the RPD's sabotage of a public forum.

Case Overview. The RPD was unhappy that citizens with differing points of view than the RPD's official policy were going to speak at the Commonwealth Club. Ginsburg & Buell were clearly unhappy with this meeting and decided to "unofficially" add Buell as a speaker, change the meeting topic and add Buell to the panel. Ginsburg working in concert with Susan Hirsh, a City Fields lobbyist & Sarah Ballard, a Ginsburg sycophant, changed the meeting by deliberately disparaging the existing citizen panel, influence peddling and coercion. After the Commonwealth meeting, I received some of the RPD's emails through a private source and then filed a document records request. The RPD stated that none of the requested documents existed. After the Commonwealth documents were submitted, the RPD then took a position that they could decide which emails should be deleted. This important free speech case is about 1) the abuse of citizen's free speech by a public agency directed by Phil Ginsburg, 2) the deletion of relevant documents and 3) a cover-up of the RPD's predatory behavior.

QUESTIONS THAT THE RPD NEEDS TO ANSWER

Was Buell, Ballard & Gong acting consistently with the RPD's record retention policy? A policy which required the RPD to retain records for a minimum of two years. Both Buell and Ginsburg had signed a Sunshine Ordinance Document on April 1, 2011.

Were RPD documents deleted that should have been kept?

Is the RPD accountable for any of its actions?

Should Buell, Ballard & Gong, the RPC and sympathetic lobbyist Susan Hirsh be allowed to continue to conspire against citizens free speech rights.

ORDER OF DETERMINATION

August 8, 2011

DATE THE DECISION ISSUED

July 26, 2011

GEORGE WOODING V RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)

FACTS OF THE CASE

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

COMPLAINT FILED

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

HEARING ON THE COMPLAINT

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3rd and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8th that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10th, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20th, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

CITY AND COUNTY OF SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25th, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26th, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11th forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19th letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13th, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe) □ Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

11049 _ George Wooding v Recreation and Park Department

Ginsburg hides from all sunshine laws and a compliant Ethics Department finds him—of course---Innocent. Will Buell, Ballard & Gong be found guilty of any violations?

RECOMMENDATION

Based on the above reasons and Ethic's staff recommendations, please find that Buell, Ballard & Gong violate Sunshine Ordinance sections 67.25, 67.26, 67.27, or 67.21(c)

For the foregoing reason's, I respectfully request that the Ethics Commission find that Buell, Ballard & Gong violated the Sunshine Ordinance and cite them accordingly.

Sincerely,

George Wooding



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Date: January 31, 2013

To: Caroline Celaya, Respondent
Cynthia Carter, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE - Show Cause Hearing – Ethics Complaint 04-120507**

On April 30, 2012, the Sunshine Ordinance Task Force ("Task Force") delivered a referral letter and Order of Determination ("Order") to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance sections 67.30(c) and 67.35(d), and San Francisco Charter section 15.102. The named Complainant is Cynthia Carter. The named Respondent is Caroline Celaya from the San Francisco Municipal Transportation Authority for "continued violation of Sunshine Ordinance Sections 67.21(b) and (c) and failure to comply with the [Order] issued on September 2, 2011, in Sunshine Complaint No. 11042."

The Task Force concluded that Ms. Celaya violated section 67.21(b) for failing to provide documents in a timely manner, section 67.21(c) for failing to direct the Complainant to the appropriate contacts for locating certain documents, and section 67.21(e) for failing to send a knowledgeable person to the Task Force hearing.

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter will be heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"). Staff has scheduled this matter to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013**, in Room 400 in City Hall.

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (*See* Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum, as well as a copy of the Regulations.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

April 30, 2012

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Referral for Failure to Comply with Order of Determination
Sunshine Complaint No. 11042, Cynthia Carter v. San Francisco Municipal
Transportation Agency**

The Sunshine Ordinance Task Force ("Task Force") hereby refers Caroline Celaya from the San Francisco Municipal Transportation Authority ("SFMTA") for continued violation of Sunshine Ordinance Sections 67.21(b) and (c) and failure to comply with the Order of Determination ("Order") issued on September 2, 2011 in Sunshine Complaint No. 11042, Cynthia Carter v. San Francisco Municipal Transportation Agency.

This referral is made for enforcement and appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts";
- (2) San Francisco City Charter Section 15.102 which provides that the Ethics Commission "may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records"; and
- (3) Sunshine Ordinance Section 67.35(d) whereby "any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed.

Background

Cynthia Carter filed a complaint with the Task Force on May 31, 2011 alleging that the SFMTA failed to adequately respond to her public records request made on May 12, 2011.

Task Force Hearing on Complaint

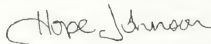
On August 23, 2011, the Task Force held a hearing on the complaint, finding Caroline Celaya in violation of Sunshine Ordinance public records provisions. Ms. Celaya and the SFMTA were ordered to produce the requested records to Ms. Carter no later than September 9, 2011.

On October 11, 2011, the Task Force's Compliance and Amendments Committee held a hearing on compliance with the Order to produce the records, finding that Ms. Celaya and the SFMTA had failed to comply. The matter was returned to the Task Force for further action with a recommendation that the Task Force refer the matter to the Ethics Commission.

On October 25, 2011, the Task Force held a hearing to further monitor compliance and consider the committee's recommendation. The Task Force found that Caroline Celaya and the SFMTA continued to fail to produce the records and had not referred Ms. Carter to appropriate department contacts with relevant information.

A description of the first Task Force hearing, violations found, and decision are described in the attached Order.

Thank you for your attention to this matter. Please contact the Task Force Administrator at softf@sfgov.org or (415) 554-7724 for any additional information needed.



Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: Cynthia Carter, Complainant
Caroline Celaya, SFMTA, Respondent
David Hill, SFMTA, Respondent
Jerry Threat, Deputy City Attorney

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

September 2, 2011

DATE THE DECISION ISSUED

August 23, 2011

CYNTHIA CARTER v SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (CASE NO. 11042)

FACTS OF THE CASE

Cynthia Carter alleges that the San Francisco Municipal Transportation Agency ("SFMTA") violated public records laws by failing to adequately respond to her May 12, 2011 request for public documents and her own employment records.

COMPLAINT FILED

On May 31, 2011, Ms. Carter filed a complaint with the Task Force against the SFMTA, alleging violation of Section 6254(c) of the California Public Records Act.

HEARING ON THE COMPLAINT

On August 23, 2011, Ms. Carter presented her case to the Task Force. Kathy Fowlis responded for the SFMTA.

Ms. Carter testified that she requested her entire file from SFMTA. She opened a sealed envelope before the Task Force, announcing she received it two weeks ago from the SFMTA but was now opening it for the first time. After going through its contents, she said some of the documents that she asked for were not provided. She said the missing documents included write-ups from supervisors, Central Control reports, and mechanical reports on defective buses. The write-ups from supervisors related to a sexual harassment claim filed by Ms. Carter against her supervisor, who then, she said, began to write up reports against her for use in discharging her from the SFMTA in retaliation for her filing the claim. She said she requested the documents from Caroline Celaya, who was not present at the Task Force hearing, and not from Ms. Fowlis. She said she would not have lost her civil service hearing if she had been provided with all the documents she requested to prove her case. She also said no one told her that she needed to go to different offices for certain documents. When she called Central Control or Street Operations, she was never directed to an appropriate contact person and was told only a lawyer could have access to some documents she was requesting.

Ms. Fowlis testified she is the custodian of records for the SFMTA's Human Resources division only, and that her division keeps the official personnel files for employees. She said Ms. Carter had been provided with a copy of all the documents that were in her official personnel file. She said she does not know if other documents exist but if Ms. Carter had made a sexual harassment claim, that paperwork would be filed with the Equal Employment Opportunity office and not with Human Resources. She said paperwork on defective buses would be maintained by Central Control and those documents would not be in the personnel files. Ms. Fowlis several times indicated in response to Task Force questions that she did not have the necessary information and that Ms. Celaya would be the appropriate person to answer. She further indicated that Ms. Celaya had directed her to represent the SFMTA, probably because the description of the Task Force agenda item for this complaint referred to the failure of the SFMTA to provide Ms. Carter with her personnel file.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that although the SFMTA properly invoked several time extensions, they were nevertheless late in providing the documents to Ms. Carter, who should have received the documents on June 14th but did not receive them until June 23rd. The Task Force also found that although SFMTA officials knew where to direct Ms. Carter to find certain documents, they did not provide assistance to the requester, as required under the Sunshine Ordinance, to help her understand where the documents she sought were located.

DECISION AND ORDER OF DETERMINATION

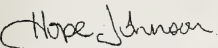
The Task Force finds Caroline Celaya in violation of Sections 67.21(b) for not providing the documents in a timely manner, 67.21(c) for failure to direct the complainant to the appropriate contacts for locating specific categories of documents, and 67.21(e) for failing to send a knowledgeable person to the Task Force hearing on the complaint.

The SFMTA is ordered to provide Ms. Carter with copies of the write ups she received from her supervisors, mechanical reports on defective busses, and the complete Central Control reports relative to her case within 5 business days of the issuance of this Order of Determination and is instructed to appear at a hearing on compliance with this Order before the Compliance and Amendments Committee on Tuesday, September 13, 2011 at 4 p.m. in Room 406 at City Hall.

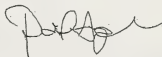
This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Knee)

Ayes: Snyder, Knee, Washburn, Costa, West, Johnson

Excused: Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

c: Cynthia Carter, Complainant
Caroline Celaya, Respondent
Kathy Fowles, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

Date: August 23, 2011

Item No. 8 & 9
File No. 11042

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: August 19, 2011

*This list reflects the explanatory documents provided

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: July 23, 2011
RE: *Complaint No. 11042, Cynthia Carter v. Municipal Transportation Agency ("MTA")*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Cynthia Carter ("Complainant") alleges that the Municipal Transportation Agency ("MTA") violated public records laws by failing to adequately respond to her May 12, 2011 request for public documents.

COMPLAINANT FILES COMPLAINT:

On May 31, 2011, Complainant filed this complaint against MTA, referring to "6254 C" as the specific provision of law violated.

JURISDICTION

MTA is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.
- Section 6254(c) governs exemption from disclosure for personnel files under certain circumstances.

APPLICABLE CASE LAW:

None

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RECEPTION: (415) 554-3800 • FACSIMILE: (415) 437-4644

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MEMORANDUM

TO: Sunshine Task Force
DATE: July 23, 2011
PAGE: 2
RE: *Complaint No. 11042, Carter v. MTA*

ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that on May 12, 2011, she made a public records request to MTA, asking for "my files [] (my entire files please) as well as central control logs[,] logs from the Flynn Mechanic Shop from reports of buses that I was driving and required service from road call, all inspection reports concerning me. cc logs, reports, phone recordings referring to me and emails, side letters, letters mailed to me referring to the supervisor test and station test as well as the actual dates of these tests."

Complainant also provides three responses from MTA to her request. The first is a May 18, 2011 email from MTA requesting further clarification of Carter's record request. This email describes the request as made on May 13, 2011 (rather than May 12) and seeking "my records from 2-1-99 – 8-11-10. I would also like all side letters, faxes, correspondence between management, etc, emails, notes, arbitrator reports, investigations." This suggests that Carter may have made more than one request around this time.

The second and third responses from MTA are letters dated May 23 and May 31, 2011. Each of these letters invoked an additional 14-day extension of time to respond to Complainant's records request. However, the first letter refers to Complainant's May 13, 2011 public records request, while the second letter refers to Complainant's May 19, 2011 public records request. Again, this suggests that Complainant made more than one public records request to MTA and that she has provided evidence referring to multiple requests.

Contested Facts: As of the date of this memorandum, I have not been provided with any response from MTA to the complaint, so it is unclear what, if any, allegations they contest.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did Complainant make more than one public records request?
- If so, what were the dates of those requests and what did they seek?
- Which request does this complaint involve?
- Which of the responses from MTA refer to the request that is the subject of this complaint?
- Did MTA ever provide an additional response to the request that is the subject of this complaint?
- If so, when was the response made?
- If so, were responsive documents provided to complainant?
- Did MTA withhold any documents in responding to this request?
- Was any withholding justified in writing with reference to appropriate exemptions?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did the MTA violate the public records laws?

MEMORANDUM

TO: Sunshine Task Force
DATE: July 23, 2011
PAGE: 3
RE: *Complaint No. 11042, Carter v. MTA*

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
 DATE: July 23, 2011
 PAGE: 4
 RE: Complaint No. 11042, Carter v. MTA

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

SEC. 67.25. IMMEDIACY OF RESPONSE.

a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare response to the request.

d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of

MEMORANDUM

TO: Sunshine Task Force
 DATE: July 23, 2011
 PAGE: 5
 RE: *Complaint No. 11042, Carter v. MTA*

some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 23, 2011
PAGE: 6
RE: *Complaint No. 11042, Carter v. MTA*

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) **Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.** The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

SECTION 6254. EXEMPTION OF PARTICULAR RECORDS

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(c) Personnel, medical, or similar files, *the disclosure of which would constitute an unwarranted invasion of personal privacy.*

SECTION 6255. JUSTIFICATION FOR WITHHOLDING OF RECORDS

(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.



<complaints@sfgov.org>
05/31/2011 08:46 AM

To <sotf@sfgov.org>
cc
bcc
Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:S.F.M.T.A.
CONTACTED:KATHY FOWLIS

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:Yes

MEETING_DATE:

SECTIONS_VIOLATED:6254 C

DESCRIPTION:May 12, 2011, I went into the s.f.m.t.a. offices at 1 so. van ness requesting my records by way of a note left with martha acevedo, at the front desk, on the 6th floor, for kathy fowlis to provide me with my records in 10 days, it is now beyond the 10 days and I have yet to receive my files and papers requested. I need these papers for my rebuttal with the civil service commission and they needed to be turned in by the 31st of may 2011, the mta knew this and as a result they are holding on to my records and information that I need to respond to the civil service commission.

HEARING:Yes

PRE-HEARING:Yes

DATE:

NAME:Cynthia Carter

ADDRESS:1871 sunnydale ave

CITY:san francisco

ZIP:94134

PHONE:415 2862769

CONTACT_EMAIL:dimplescarter03@aol.com

ANONYMOUS:

From: Celaya, Caroline (Caroline.Celaya@sfmta.com)
To: dimplescarter1963@att.net;
Date: Wed, May 18, 2011 11:30:44 AM
Cc:
Subject: public records request

Hi Cynthia:

I'm in receipt of your public records request seeking "my records from 2-1-99 - 8-11-10. I would like all side letters, faxes correspondence between management etc. emails, notes, arbitrators reports investigations."

The Agency is gathering responsive documents though your request is vague and staff would like some clarification on the documents you are seeking.
Can you please be more specific with regards to "my records"?

Thank you,

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
415.701.4670

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 JUN -6 AM 10:58
BY AK
1 OF 4 PAGES

ATTN: ~~Mr.~~ Ms. Kathy Fowles

I, Cynthia Carter am

requesting a copy of my files
from SFMTA (My entire file please)

as well as Central Control logs
Logs from the Glyn Mechanic Shop
from reports of buses that I was
driving and required service from Road Call,
all insp. reports concerning me, cc logs, reports
phone recordings referring to me and emails, side
letters, Letters mailed to me referring to the
supervisor test & station agent test as well as
the actual dates of these tests

Please do not pass
to Cynthia Hamada
~~Cynthia~~ Thanks.

Thank you
Cynthia Carter

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Leona Bridgus | Director

Cheryl Brinkman | Director

Malcolm Helmick | Director

Bruce Oke | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

May 23, 2011

SENT VIA EMAIL

Cynthia Carter

Dimplescarter1963@att.net

RE: Public Records Request dated May 13, 2011

Dear Ms. Carter:

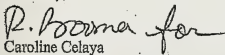
On behalf of the San Francisco Municipal Transportation Agency (the "SFMTA"), this letter responds to your public records request dated May 13, 2011.

Please be advised we are hereby invoking an extension of an additional fourteen (14) calendar days from May 23, 2011, to respond to your request.

Under the California Public Records Act and the San Francisco Sunshine Ordinance, the deadline can be extended for an additional fourteen days due to "the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request," and "the need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein." Cal. Gov't Code §6253(c)(2) and (3). The SFMTA is invoking the extension on these grounds because staff must (1) collect and examine a voluminous amount of material, and (2) consult with another City agency having substantial subject matter interest in the request. We will endeavor to respond to your request as soon as possible, but not later than June 6, 2011.

Please do not hesitate to contact the Sunshine Request line at 415-701-4670 or sfintasunshinerequests@sfmta.com if you have any questions.

Sincerely,


Caroline Celaya

Date: Oct. 25, 2011

Item No. 6

File No. 11042

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

<input checked="" type="checkbox"/>	Cynthia Carter v Municipal Transportation Agency
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<input type="checkbox"/>	_____
<input type="checkbox"/>	_____

Completed by: Chris Rustom

Date: Oct. 20, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
September 2, 2011

DATE THE DECISION ISSUED
August 23, 2011

CYNTHIA CARTER v SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (CASE NO. 11042)

FACTS OF THE CASE

Cynthia Carter alleges that the San Francisco Municipal Transportation Agency ("SFMTA") violated public records laws by failing to adequately respond to her May 12, 2011 request for public documents and her own employment records.

COMPLAINT FILED

On May 31, 2011, Ms. Carter filed a complaint with the Task Force against the SFMTA, alleging violation of Section 6254(c) of the California Public Records Act.

HEARING ON THE COMPLAINT

On August 23, 2011, Ms. Carter presented her case to the Task Force. Kathy Fowlis responded for the SFMTA.

Ms. Carter testified that she requested her entire file from SFMTA. She opened a sealed envelope before the Task Force, announcing she received it two weeks ago from the SFMTA but was now opening it for the first time. After going through its contents, she said some of the documents that she asked for were not provided. She said the missing documents included write-ups from supervisors, Central Control reports, and mechanical reports on defective buses. The write-ups from supervisors related to a sexual harassment claim filed by Ms. Carter against her supervisor, who then, she said, began to write up reports against her for use in discharging her from the SFMTA in retaliation for her filing the claim. She said she requested the documents from Caroline Celaya, who was not present at the Task Force hearing, and not from Ms. Fowlis. She said she would not have lost her civil service hearing if she had been provided with all the documents she requested to prove her case. She also said no one told her that she needed to go to different offices for certain documents. When she called Central Control or Street Operations, she was never directed to an appropriate contact person and was told only a lawyer could have access to some documents she was requesting.

Ms. Fowles testified she is the custodian of records for the SFMTA's Human Resources division only, and that her division keeps the official personnel files for employees. She said Ms. Carter had been provided with a copy of all the documents that were in her official personnel file. She said she does not know if other documents exist but if Ms. Carter had made a sexual harassment claim, that paperwork would be filed with the Equal Employment Opportunity office and not with Human Resources. She said paperwork on defective buses would be maintained by Central Control and those documents would not be in the personnel files. Ms. Fowles several times indicated in response to Task Force questions that she did not have the necessary information and that Ms. Celaya would be the appropriate person to answer. She further indicated that Ms. Celaya had directed her to represent the SFMTA, probably because the description of the Task Force agenda item for this complaint referred to the failure of the SFMTA to provide Ms. Carter with her personnel file.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that although the SFMTA properly invoked several time extensions, they were nevertheless late in providing the documents to Ms. Carter, who should have received the documents on June 14th but did not receive them until June 23rd. The Task Force also found that although SFMTA officials knew where to direct Ms. Carter to find certain documents, they did not provide assistance to the requester, as required under the Sunshine Ordinance, to help her understand where the documents she sought were located.

DECISION AND ORDER OF DETERMINATION

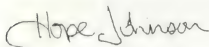
The Task Force finds Caroline Celaya in violation of Sections 67.21(b) for not providing the documents in a timely manner, 67.21(c) for failure to direct the complainant to the appropriate contacts for locating specific categories of documents, and 67.21(e) for failing to send a knowledgeable person to the Task Force hearing on the complaint.

The SFMTA is ordered to provide Ms. Carter with copies of the write ups she received from her supervisors, mechanical reports on defective busses, and the complete Central Control reports relative to her case within 5 business days of the issuance of this Order of Determination and is instructed to appear at a hearing on compliance with this Order before the Compliance and Amendments Committee on Tuesday, September 13, 2011 at 4 p.m. in Room 406 at City Hall.

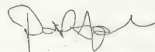
This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011, by the following vote: (Johnson/Knee)

Ayes: Snyder, Knee, Washburn, Costa, West, Johnson

Excused: Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

c: Cynthia Carter, Complainant
Caroline Celaya, Respondent
Kathy Fowles, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Date: January 31, 2013

To: Frank Lee, Respondent
Mohammed Nuru, Respondent
Lars Nyman, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE – Show Cause Hearing – Ethics Complaint 07-120621**

On June 20, 2012, the Sunshine Ordinance Task Force (“Task Force”) delivered a referral letter and Order of Determination (“Order”) to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance sections 67.30(c) and 67.35(d), and San Francisco Charter section 15.102. The named Complainant is Lars Nyman. The named Respondents are Frank Lee and Mohammed Nuru from the San Francisco Department of Public Works for “failure to assist [the requestor] in identifying the existence, form, and nature of available records related to initial approvals and authorizations of [a DPW project] and for failure to provide contact information for appropriate DPW staff” in violation of Sunshine Ordinance, section 67.21(c). In addition, the Task Force found a violation of Sunshine Ordinance section 67.21(e) for “providing an incomplete response to the request for public records regarding initial approval and authorization of the project.”

The Task Force also found a violation of Sunshine Ordinance section 67.21(e) against Frank Lee for failing to appear at the “Task Force hearing on compliance.”

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter will be heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance (“Regulations”). Staff has scheduled this matter to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, February 25, 2013**, in Room 400 in City Hall.

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (See Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his

or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (See Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum, as well as a copy of the Regulations.

FILED

2012 JUN 21 AM 9:09

SAN FRANCISCO
ETHICS COMMISSION
**SUNSHINE ORDINANCE
TASK FORCE**

BY _____



City Hall

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco 94102-4689

Tel. No. (415) 554-7724

Fax No. (415) 554-7854

TDD/TTY No. (415) 554-5227

April 30, 2012

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Referral for Enforcement of Order of Determination, Action on Failure to Appear
Sunshine Complaint No. 11087, Lars Nyman v. Department of Public Works**

The Sunshine Ordinance Task Force ("Task Force") hereby refers for enforcement the Order of Determination ("Order") issued on February 27, 2012 in Sunshine Complaint No. 11087, Lars Nyman v. Department of Public Works.

This referral for enforcement is made pursuant to:

- (1) Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts";
- (2) San Francisco City Charter Section 15.102 which provides that the Ethics Commission "may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records"; and
- (3) Sunshine Ordinance Section 67.35(d) whereby "any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed.

The Task Force further refers Frank Lee, Executive Assistant to the Director of the Department of Public Works, for failure to appear at the Task Force hearing on compliance in violation of Sunshine Ordinance Section 67.21(e). This referral is made pursuant to Sunshine Ordinance Section 67.30(c) as previously cited.

<http://www.sfgov.org/sunshine/>

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7224
20 Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227
SAN FRANCISCO
ETHICS COMMISSION

ORDER OF DETERMINATION

February 27, 2012

BY _____

DATE THE DECISION ISSUED

January 3, 2012

LARS NYMAN v DEPARTMENT OF PUBLIC WORKS (CASE NO. 11087)

FACTS OF THE CASE

Complainant Lars Nyman alleges that the San Francisco Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 request for public information related to the approval or authorization of the Montgomery/Alta Street tree project.

COMPLAINT FILED

On November 14, 2011, Lars Nyman filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that DPW violated the public information and public records provisions of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On January 3, 2012, Lars Nyman appeared before the Task Force and presented his complaint. DPW was represented by its Director's Executive Assistant Frank Lee, who presented the response.

On October 6, 2011, Mr. Nyman requested from DPW any documents related to the approval or authorization of both the Montgomery/Alta Street tree project and the initial budget for that project. This request was made in follow-up to his previous request for documents related to the approval of the final cost of \$229,039.80, an amount over the original budget of \$101,625.50. Mr. Nyman made the follow-up request at issue in this complaint after DPW told him that no documents exist related to approval of costs over the original budget because that approval was given verbally.

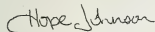
Mr. Nyman stated that Mr. Lee told him no documents exist that are responsive to his current request for the initial approval of the project itself other than those provided in response to previous requests. Mr. Nyman alleged that no documents related to the initial project approval have ever been provided. He stated Mr. Lee offered to arrange for him to meet with DPW staff to discuss the project but that he preferred to receive a response in writing. He further stated that Mr. Lee provided him with the names of DPW staff involved in the project but not with their contact information.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 3, 2012, by the following vote: (Wolfe/West - 7/1/2)

Ayes: 7 - Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Lars Nyman, Complainant
Frank Lee, Executive Assistant, Department of Public Works, Respondent
Mohammed Nuru, Interim Director, Department of Public Works, Respondent
Jerry Threet, Deputy City Attorney



Sunshine Complaint

complaints

to:

sotf

11/14/2011 03:21 PM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Department of Public Works

CONTACTED:Frank Lee

PUBLIC RECORDS_VIOLATION:Yes

PUBLIC MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION:The Department of Public Works spent \$229,039.80 in 2010/2011 on the Montgomery/Alta Street tree project. The project was initially budgeted for \$101,625.50. I made a request under the Sunshine Ordinance to the Department of Public Works and Frank Lee (DPW's designated point man for Sunshine Ordinance requests) on October 6, 2011. In my request, I requested any document or documents that approved or authorized this project. I also requested any document or documents that approved or authorized the initial budget for \$101,625.50 for this project. As of this date, October 20, 2011, Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that "...other than..." documents he has provided to me in prior requests "...we do not have any other documents that would be responsive...". The use of "other than" implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget.

HEARING:Yes

PRE-HEARING:No

DATE:October 20

NAME:Lars Nyman

City and County of San Francisco



San Francisco Department of Public Works

1 Dr. Carlton B. Goodlett Place, City Hall, Room 348
San Francisco, CA 94102
(415) 554-6900 ■ www.sfdpw.org

Edwin M. Lee, Mayor
Mohammed Nuru, Interim Director



November 22, 2011

Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Subject: Sunshine Complaint #11087
Lars Nyman v Public Works

Dear Sunshine Ordinance Task Force:

We answered Mr. Nyman's October 6, 2011 Public Records Request promptly on the following day. At that time, we explained to Mr. Nyman that we had already given to him – through our previous responses to his previous records requests – the documents that were responsive to his latest request. We also explained to Mr. Nyman why there were no documents that fit some of his questions and invited him to discuss this with our staff.

Mr. Nyman did not accept our invitation to meet.

On October 13, 2011, we outlined every document that we provided to him since he began his requests. Our first response to him was on June 15, 2011. At the end of this outline was another invitation to meet and discuss.

Mr. Nyman still has not accepted our invitation to meet.

As evidence of our responses, I am attaching the October 13, 2011 email to Mr. Nyman, which also contains Mr. Nyman's record request of October 6 and our initial response on October 7.

We understand that the Public Records Act requires an agency to make available to any person a copy of an "identifiable record or records" in its possession, unless the record is specifically exempt from disclosure. (Please see California Government Code § 6253(b).) Our obligation under the Sunshine Ordinance, like the Public Records Act, is to produce public records in our custody. (See San Francisco Administration Code § 67.20(b).) There is no requirement that our department or officers construct a document to meet the specifications of any request.



San Francisco Department of Public Works
Making San Francisco a beautiful, livable, vibrant, and sustainable city.

Lee, Frank W

From: Lee, Frank W
Sent: Thursday, October 13, 2011 5:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Here is a summary of what we gave to you and explained to you.

On June 15, 2011, we gave to you:

- A copy of the Notice of Tree Removal that was posted; and
- 14 letters and emails that we received during the Notice of Tree Removal posting period (June 1, 2010 to June 30, 2010).

On June 27, we gave to you:

- Four emails exchanged between Dadisi Najib and Frank W. Lee on April 12, 2011.

On July 6, we gave to you:

- An April 12, 2011 email to Dadisi Najib from James DeVinny; and
- An April 12, 2011 email to Dadisi Najib, Gloria Chan, and James DeVinny from Frank W. Lee.

On August 8, we gave to you:

- The original cost estimate of \$101,625.50 that was produced in September 2010

On that same August 8, we also:

- Informed you that the final actual cost of the project is being calculated; and
- Explained to you which employees discussed and determined the sending of workers to work on the project on Sunday, March 27.

On August 12, we gave to you:

- A spreadsheet showing the actual total cost (\$229,039.80) and the labor hours spent; and
- Nine reasons for exceeding the original estimate (\$101,625.50).

On August 26, we gave to you:

- The date of when the itemized estimated budget or cost for the project was approved, which was September 2010;
- Documents, including sketches, related to the original estimate (\$4,248.65) of the "tree support" that was also approved in September 2010;
- The name of the employee that produced the itemized estimated budget or cost for the project; and
- The name of the employee that approved that itemized estimated budget or cost for the project.

On August 29, we:

From: Up Dog [mailto:upwardfacingdog@hotmail.com]

Sent: Sunday, October 09, 2011 6:49 PM

To: Lee, Frank W

Cc: Up Dog

Subject: RE: Sunshine Ordinance request

Mr Lee,

No, I have not received any documents from your or from the Department of Public Works that address my current request - I have not received any such documents nor have I requested such documents.

I am not unclear about anything. What I am clear about is that I issued an official request under the Sunshine Ordinance of the City of San Francisco and that I did not receive a proper response.

You state that "Other than what we have already provided to you..." and "... we do not have any other documents...". Your statement and use of "other" implies there are documents that address my request. However, as I stated above, I have not received any documents from you or from the Department of Public Works that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the Initial budget for the Montgomery/Alta Street tree project.

I submitted my official request under the Sunshine Ordinance of the City of San Francisco. You are obligated, under the Sunshine Ordinance of the City of San Francisco, to supply such documents and you did not. If the Department of Public Works does not have any documents that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the Initial budget for the Montgomery/Alta Street tree project, you need to explicitly and clearly state so.

Consequently, I consider that you have not responded to my request under the Sunshine Ordinance of the City of San Francisco.

Sincerely,
Lars Nyman

From: Frank.W.Lee@sfdpw.org
To: upwardfacingdog@hotmail.com
CC: upwardfacingdog@hotmail.com
Date: Fri, 7 Oct 2011 19:05:47 -0700
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Other than what we have already provided to you in response to your previous requests, we do not have any other documents that would be responsive to your request, again, for documents that approves and/or authorizes the Montgomery/Alta street tree project and for documents that approves and/or authorizes the Initial budget for the Montgomery/Alta street tree project.

Furthermore, I explained to you the approval method that was used and the names of the employees that produced the initial estimate and made the approval. If you are unclear about this and would like to discuss this with these employees, please let me know. I would be able to arrange a meeting for you.

Sincerely,
Frank W. Lee
Executive Assistant to the Director

File No. 11087

SOTF Item No. _____
CAC Item No. 5

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: _____

Compliance and Amendments Committee

Date: March 20, 2012

CAC/SOTF

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Memorandum
Order of Determination
Complaint and supporting documents

OTHER

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<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Completed by: Andrea Ausberry Date March 14, 2012
Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

Mr. Lee stated DPW had previously provided all responsive documents to Mr. Nyman. He stated that he had confirmed with DPW staff that the approval of costs over the initial estimate was done verbally, and, therefore, no documents exist related to that approval. He repeated his offer to arrange for Mr. Nyman to meet with DPW staff to review and discuss specific information relative to his requests.

Mr. Lee also described details of his search for responsive documents. Upon further questioning by the Task Force, Mr. Lee stated that he did not know if records exist related to initial approval or authorization of the project itself, including approval of the posting of the notice of tree removal. He further stated he believed such a request would constitute a new records request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that a request for documents related to initial approval of the project itself is not a new request because Mr. Nyman's October 6, 2011 email to DPW at issue in this complaint specifically requests that information. The Task Force further found that Mr. Nyman's request for any initial approval documents is logically inclusive of approvals or instructions to post notices of tree removal, one of the initial steps of the project.

Based on Mr. Lee's admission that he does not know if records exist related to the initial approval or authorization of the project itself, including approval of the initial budget and notices of tree removal, the Task Force found that DPW had not fully responded to Mr. Nyman's request as required by Sunshine Ordinance Section 67.21(e). Based on statements by Mr. Nyman and documents presented for the hearing, the Task Force further found that DPW had not assisted Mr. Nyman in identifying records available or provided him with contact information for appropriate project staff upon learning he wanted to receive his responses in writing as required by Sunshine Ordinance Section 67.21(c).

DECISION AND ORDER OF DETERMINATION

The Task Force finds DPW in violation of Sunshine Ordinance Sections:

67.21(c) for failure to assist Mr. Nyman in identifying the existence, form, and nature of available records related to initial approvals and authorizations of the project and for failure to provide contact information for appropriate DPW staff; and

67.21(e) for providing an incomplete response to the request for public records regarding initial approval and authorization of the project.

DPW shall research the existence of public records and information related to the initial approval or authorization of both the project itself and the initial budget for the project, release the requested records within 5 business days of the issuance of this Order of Determination, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00pm in Room 406. The Committee shall monitor compliance with this Order of Determination.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sigov.org

MEMORANDUM

December 27, 2011:

LARS NYMAN VS. DEPARTMENT OF PUBLIC WORKS (11087)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Lars Nyman ("Complainant") alleges that the Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 public records request for public information related to the approval and/or authorization of the Montgomery/Alta Street tree project.

COMPLAINANT FILES COMPLAINT:

On October 20, 2011, Complainant filed this complaint against DPW.

JURISDICTION:

DPW is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that on October 6, 2011, he requested from Frank Lee of DPW public information related to the approval and/or authorization of the Montgomery/Alta Street tree project. He further alleges that, as of October 20, 2011, "Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that '...other than...' documents he has provided to me in prior requests '...we do not have any other documents that would be responsive...'. The use of 'other than' implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget."

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 3
RE: Complaint 11087: Nyman v. DPW

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 5
RE: Complaint 11087: Nyman v. DPW

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)

SECTION 6253

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:
 - (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
 - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
 - (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

ADDRESS:

CITY:

ZIP:

PHONE:

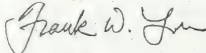
CONTACT_EMAIL:upwardfacingdog@hotmail.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

In summary, we believe that our department responded to Mr. Nyman's request properly.

Sincerely,



Frank W. Lee
Executive Assistant to the Director



- Again, explained that the original tree support budget of \$4,248.65 was approved in September 2010; and
- Explained that the final actual cost of the tree support was \$23,561.

On September 9, we gave to you:

- Sketch of the tree base for the tree support that was actually built; and
- Sketch of the tree support and saddle, as part of the tree support, that were actually built

On that same September 9, we also:

- Explained to you how the approval of building the tree support (base, support and saddle) was made and, subsequently, why there were no documents showing this approval.

On September 12, we

- Again, stated that there were no documents showing approval of the building of the tree support.

On September 30, we

- Explained that we have no documents that shows discussions concerning "the overrun of cost of this project";
- Explained that we had already given to you the name of the employee that approved the \$101,625.50 original estimate and that there were no documents because his approval was done verbally; and
- Explained that there is no approval of the final cost because the \$229,039.80 expenditure was the actual cost of the entire project, not an estimate used for any approval or authorization.

On October 3, we:

- Explained that there were no documents, including any emails, that show approval and/or authorization of spending more than the original \$101,625.50 cost that was verbally approved at the beginning of the project.

And, finally, on October 7, we:

- Offered to arrange a meeting between you and the employees that made the original estimate and approvals so that you could discuss any concerns you had with them.

If you find that you are missing any of the above emails or documents in your email inbox, please let me know.

There are no documents, other than what were included in the documents that we gave to you (see above), that shows or are related to the approval and/or authorization of the Montgomery/Alta Street tree project. There are no documents, other than what were included in the documents that we gave to you (see above), that are related to the approval and/or authorization of the initial budget for the Montgomery/Alta Street tree project.

If you would like to meet, please let me know.

Sincerely,

Frank W. Lee
 Executive Assistant to the Director
 Department of Public Works
 Tel: (415) 554-6993
 Fax: (415) 522-7727
 Email: Frank.W.Lee@sfdpw.org

Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: m m [mailto:upwardfacingdog@hotmail.com]
Sent: Thursday, October 06, 2011 10:32 AM
To: Lee, Frank W
Cc: Up Dog
Subject: Sunshine Ordinance request

Dear Mr. Lee,

In my email on 10/3/2011 to you I asked you a couple of questions. Since I have not received a response from you I am forced to submit an official Sunshine Ordinance request to get the information.

As a background, I have tried since April 2011 to get information from you and the Department of Public Works about the Montgomery/Alta Street tree project that was performed in early 2011. You have informed me that the amount in the budget for the Montgomery/Alta Street tree project that was approved was \$101,625.50. You have indicated that there are no documents showing any information or discussion about the cost overrun for this project, that there are no documents showing approval or authorization for spending beyond the initial budget for this project. In a comment, you also seem to have indicated there are no documents showing approval or authorization for the initial budget itself.

It seems somewhat surprising that there would be no documents approving or authorizing the initial budget for the project and the spending of money for this project. Since I had not issued an official request for that information, and since I may have misunderstood your comments, to make sure I will make an official Sunshine Ordinance request to get to the bottom of this.

If there are no documents showing approval or authorization for the initial budget for the project, I am wondering if there are any documents showing approval and authorization of the project itself. Again, to get to the bottom of this I will make an official Sunshine Ordinance request below.

I am requesting documents under the Sunshine Ordinance of the City of San Francisco:

- 1- any documents, including emails, meeting minutes etc., that approves and/or authorizes the Montgomery/Alta Street tree project
- 2- any documents, including emails, meeting minutes etc., that approves and/or authorizes the initial budget for the Montgomery/Alta Street tree project

Note, the request for documents in this request is in addition to any other request I have made.

I look forward to receiving the information requested.

Sincerely,
Lars Nyman

File No. 11087

SOTF Item No. 6
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: April 4, 2012

Compliance and Amendments Committee

Date: _____

CAC/SOTF

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Memorandum
Order of Determination
Complaint and supporting documents

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Completed by: Andrea Ausberry Date March 27, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

Mr. Lee stated DPW had previously provided all responsive documents to Mr. Nyman. He stated that he had confirmed with DPW staff that the approval of costs over the initial estimate was done verbally, and, therefore, no documents exist related to that approval. He repeated his offer to arrange for Mr. Nyman to meet with DPW staff to review and discuss specific information relative to his requests.

Mr. Lee also described details of his search for responsive documents. Upon further questioning by the Task Force, Mr. Lee stated that he did not know if records exist related to initial approval or authorization of the project itself, including approval of the posting of the notice of tree removal. He further stated he believed such a request would constitute a new records request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that a request for documents related to initial approval of the project itself is not a new request because Mr. Nyman's October 6, 2011 email to DPW at issue in this complaint specifically requests that information. The Task Force further found that Mr. Nyman's request for any initial approval documents is logically inclusive of approvals or instructions to post notices of tree removal, one of the initial steps of the project.

Based on Mr. Lee's admission that he does not know if records exist related to the initial approval or authorization of the project itself, including approval of the initial budget and notices of tree removal, the Task Force found that DPW had not fully responded to Mr. Nyman's request as required by Sunshine Ordinance Section 67.21(e). Based on statements by Mr. Nyman and documents presented for the hearing, the Task Force further found that DPW had not assisted Mr. Nyman in identifying records available or provided him with contact information for appropriate project staff upon learning he wanted to receive his responses in writing as required by Sunshine Ordinance Section 67.21(c).

DECISION AND ORDER OF DETERMINATION

The Task Force finds DPW in violation of Sunshine Ordinance Sections:

67.21(c) for failure to assist Mr. Nyman in identifying the existence, form, and nature of available records related to initial approvals and authorizations of the project and for failure to provide contact information for appropriate DPW staff; and

67.21(e) for providing an incomplete response to the request for public records regarding initial approval and authorization of the project.

DPW shall research the existence of public records and information related to the initial approval or authorization of both the project itself and the initial budget for the project, release the requested records within 5 business days of the issuance of this Order of Determination, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00pm in Room 406. The Committee shall monitor compliance with this Order of Determination.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

December 27, 2011:

LARS NYMAN VS. DEPARTMENT OF PUBLIC WORKS (11087)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Lars Nyman ("Complainant") alleges that the Department of Public Works ("DPW") has not adequately responded to his October 6, 2011 public records request for public information related to the approval and/or authorization of the Montgomery/Alta Street tree project.

COMPLAINANT FILES COMPLAINT:

On October 20, 2011, Complainant filed this complaint against DPW.

JURISDICTION:

DPW is a City department subject to the provisions of the Sunshine Ordinance. The Department does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

- Section 67.21 governs the process for gaining access to public records.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs the written justifications for withholding of records.

APPLICABLE CASE LAW:

None

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that on October 6, 2011, he requested from Frank Lee of DPW public information related to the approval and/or authorization of the Montgomery/Alta Street tree project. He further alleges that, as of October 20, 2011, "Mr. Lee has not provided any such documents, nor explicitly stated there are no such documents. Mr. Lee did respond, without providing any documents, stating that '...other than...' documents he has provided to me in prior requests '...we do not have any other documents that would be responsive...'. The use of 'other than' implies there are documents that address my request and that he has already provided those documents to me. However, he has not - I have not received any documents from Mr. Lee that shows the approval or authorization of the project or the initial budget."

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 3
RE: Complaint 11087: Nyman v. DPW

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: December 27, 2011
PAGE: 5
RE: Complaint 11087: Nyman v. DPW

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:
 - (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
 - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
 - (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

ADDRESS:

CITY:

ZIP:

PHONE:

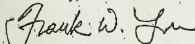
CONTACT_EMAIL:upwardfacingdog@hotmail.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

In summary, we believe that our department responded to Mr. Nyman's request properly.

Sincerely,



Frank W. Lee

Executive Assistant to the Director



- Again, explained that the original tree support budget of \$4,248.65 was approved in September 2010; and
- Explained that the final actual cost of the tree support was \$23,561.

On September 9, we gave to you:

- Sketch of the tree base for the tree support that was actually built; and
- Sketch of the tree support and saddle, as part of the tree support, that were actually built

On that same September 9, we also:

- Explained to you how the approval of building the tree support (base, support and saddle) was made and, subsequently, why there were no documents showing this approval.

On September 12, we

- Again, stated that there were no documents showing approval of the building of the tree support.

On September 30, we

- Explained that we have no documents that shows discussions concerning "the overrun of cost of this project";
- Explained that we had already given to you the name of the employee that approved the \$101,625.50 original estimate and that there were no documents because his approval was done verbally; and
- Explained that there is no approval of the final cost because the \$229,039.80 expenditure was the actual cost of the entire project, not an estimate used for any approval or authorization.

On October 3, we:

- Explained that there were no documents, including any emails, that show approval and/or authorization of spending more than the original \$101,625.50 cost that was verbally approved at the beginning of the project.

And, finally, on October 7, we:

- Offered to arrange a meeting between you and the employees that made the original estimate and approvals so that you could discuss any concerns you had with them.

If you find that you are missing any of the above emails or documents in your email inbox, please let me know.

There are no documents, other than what were included in the documents that we gave to you (see above), that shows or are related to the approval and/or authorization of the Montgomery/Alta Street tree project. There are no documents, other than what were included in the documents that we gave to you (see above), that are related to the approval and/or authorization of the initial budget for the Montgomery/Alta Street tree project.

If you would like to meet, please let me know.

Sincerely,

Frank W. Lee
Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: m m [mailto:upwardfacingdog@hotmail.com]
Sent: Thursday, October 06, 2011 10:32 AM
To: Lee, Frank W
Cc: Up Dog
Subject: Sunshine Ordinance request

Dear Mr. Lee,

In my email on 10/3/2011 to you I asked you a couple of questions. Since I have not received a response from you I am forced to submit an official Sunshine Ordinance request to get the information.

As a background, I have tried since April 2011 to get information from you and the Department of Public Works about the Montgomery/Alta Street tree project that was performed in early 2011. You have informed me that the amount in the budget for the Montgomery/Alta Street tree project that was approved was \$101,625.50. You have indicated that there are no documents showing any information or discussion about the cost overrun for this project, that there are no documents showing approval or authorization for spending beyond the initial budget for this project. In a comment, you also seem to have indicated there are no documents showing approval or authorization for the initial budget itself.

It seems somewhat surprising that there would be no documents approving or authorizing the initial budget for the project and the spending of money for this project. Since I had not issued an official request for that information, and since I may have misunderstood your comments, to make sure I will make an official Sunshine Ordinance request to get to the bottom of this.

If there are no documents showing approval or authorization for the initial budget for the project, I am wondering if there are any documents showing approval and authorization of the project itself. Again, to get to the bottom of this I will make an official Sunshine Ordinance request below.

I am requesting documents under the Sunshine Ordinance of the City of San Francisco:

- 1- any documents, including emails, meeting minutes etc., that approves and/or authorizes the Montgomery/Alta Street tree project
- 2- any documents, including emails, meeting minutes etc., that approves and/or authorizes the initial budget for the Montgomery/Alta Street tree project

Note, the request for documents in this request is in addition to any other request I have made.
I look forward to receiving the information requested.

Sincerely,
Lars Nyman.





Edwin M. Lee, Mayor
Mohammed Nuru, Director

FILED

2013 FEB 20 AM 9:26

SAN FRANCISCO
ETHICS COMMISSION



February 15, 2013

Honorable Members of The Ethics Commission
The Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

John St. Croix, Executive Director, Ethics Commission
The Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Ethics Complaint 07-120621

Dear Commissioners and Director St. Croix:

Our department responded fully to Mr. Lars Nyman's numerous Public Records Requests that we received from June 2011 to April 2012. In addition to supplying him with hundreds of documents, we believe that we exceeded the requirements of the Sunshine Ordinance by explaining our processes and by inviting Mr. Nyman to meet with us to discuss his requests.

Below is a summary of what our department provided to Mr. Nyman, as responses to his Public Records Requests.

On June 15, 2011, we gave to Mr. Nyman:

- A copy of the Notice of Tree Removal that was posted; and
- 14 letters and emails that we received from the public during the Notice of Tree Removal posting period (June 1, 2010 to June 30, 2010).

On June 27, 2011, we gave to Mr. Nyman:

- Four emails, all dated April 12, 2011, exchanged between Dadisi Najib, DPW and Frank W. Lee, DPW.

On July 6, 2011, we gave to Mr. Nyman:

- An April 12, 2011 email to Dadisi Najib, DPW, from James DeVinny, DPW; and
- An April 12, 2011 email to Dadisi Najib, Gloria Chan, DPW, and James DiVinny, from Frank W. Lee.



On August 8, 2011, we gave to Mr. Nyman:

- The original cost estimate of the project (\$101,625.50) that was produced in September 2010.

On August 8, 2011, we also answered Mr. Nyman by:

- Informing him that the final actual cost of the project is being calculated; and
- Explained which DPW employees met to discuss and determined sending workers to the project site on Sunday, March 27, 2011.

On August 12, 2011, we gave to Mr. Nyman:

- A spreadsheet showing the actual total cost of the project (\$229,039.80) and the labor hours spent on the project; and
- Nine reasons why the actual project cost exceeded the original estimate (\$101,625.50).

On August 26, we gave to Mr. Nyman:

- The date of when the itemized estimated budget or cost for the project was approved, which was September 2010;
- Documents, including sketches, related to the "tree support" which was shown as costing \$4,248.65 on the original estimate that was approved in September 2010;
- The name of the employee that produced the itemized estimated budget or cost for the project; and
- The name of the employee that approved that itemized estimated budget or cost for the project.

On August 29, 2011, we answered Mr. Nyman by:

- Explaining that the original tree support budget of \$4,248.65 was approved in September 2010; and
- Explaining that the final actual cost of the tree support was \$23,561.

On September 9, 2011, we gave to Mr. Nyman:

- Sketch of the tree base for the tree support that was built;
- Sketch of the tree support and saddle that was built; and
- An explanation of why a verbal approval to build these was made.

On September 12, 2011, we answered Mr. Nyman by:

- Again explaining that there were no documents that showed approval of building the tree support.

On September 30, 2011, we answered Mr. Nyman by:

- Explaining that we have no documents that shows discussions concerning "the overrun of cost of this project";



- Explaining that we had already given to him the name of the employee that approved the original estimate (\$101,625.50) and that there were no documents showing approval because the approval was made verbally; and
- Explaining that there is no approval of the final cost of the project because the expenditure was the actual cost of the entire project, not an estimate that needed any approval or authorization.

On October 3, 2011, we answered Mr. Nyman by:

- Explaining that there were no documents, including any emails, that showed approval and/or authorization of spending more than the original \$101,625.50 cost that was verbally approved at the beginning of the project.

On October 7, 2011, we offered to Mr. Nyman:

- The opportunity to meet with the employees that made the original cost estimate and made the original approvals so that he could discuss his request with them.

On October 13, 2011, we also offered to Mr. Nyman:

- Copies of the requested documents that we emailed to him and that he may have missed; and
- The opportunity to meet.

The above responses were documented in an October 13, 2011 email to Mr. Nyman.

On January 7, 2012, Mr. Nyman then requested all documents and emails – including those that we had previously given to him – that were related to the project. From that day to March 2012, we emailed to him hundreds of responsive documents.

At the March 20, 2012 Sunshine Ordinance Task Force Meeting, I informed the Task Force and Mr. Nyman that our department understood that the project mentioned in Mr. Nyman's request could have been managed better and with better cost controls. Prior to October 2011, our department was still trying to piece together what actually occurred on that project. Between October 2011 and January 2012, our department then installed procedures to ensure approvals for cost estimates and expenditures on future similar projects are properly documented. Our findings and results were mentioned in our department's response to a Whistleblower complaint that the Controller received in December 2011. This response, dated February 27, 2012, was provided to the Task Force at its March 20, 2012 meeting.

In early April 2012, Mr. Nyman then requested a copy of the Whistleblower complaint response and evidence that our department implemented the cost control and approval procedures, which we gave to him on April 11 and on April 12, 2012. In addition, we suggested that he could meet with us to discuss these new processes.



On May 2, 2012, at the Sunshine Ordinance Task Force Meeting, I presented a CD containing all the documents that we provided to Mr. Nyman. Although we had already emailed those documents in the CD to Mr. Nyman, I also offered a copy of that CD to him.

At that same May 2, 2012, the Sunshine Ordinance Task Force ruled that our department is required to provide the requested emails in their original formats, not pdf copies which were on the CD. Since I did not know how to provide emails in their original formats (other than forwarding each email one at a time, which would take a considerable amount of time), I suggested to the Task Force that I could have our IT staff download those emails onto CDs for Mr. Nyman. I also asked that if Mr. Nyman could supply me with his mailing address, I could mail those CDs to him.

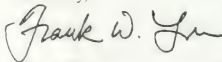
Attached for reference are:

1. The October 13, 2011 email to Mr. Nyman summarizing what we provided to him and inviting him to meet with us.
2. The February 27, 2012 response to the Controller regarding Whistleblower Complaint #3698.
3. The April 10 and April 12, 2012 emails with attachments to Mr. Nyman that responded to his request for the Whistleblower complaint response and evidence that our department implemented the cost control and approval procedures. The April 10, 2012 email also showed that we again invited him to meet with us.

As of today, Mr. Nyman has not accepted our invitation to meet.

We also have not received Mr. Nyman's mailing address; therefore, I will bring the CDs containing the requested emails in their original formats with me to the February 25, 2013 Ethics Commission Meeting. I will also bring with me a CD containing the pdf copies of all the documents, including the emails, that we already gave to Mr. Nyman.

Sincerely,



Frank W. Lee
Executive Assistant to the Director

cc: Lars Nyman (email: upwardfacingdog@hotmail.com)
Mohammed Nuru, Director of Public Works



Lee, Frank W

From: Lee, Frank W
Sent: Thursday, October 13, 2011 5:18 PM
To: 'Up Dog'
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Here is a summary of what we gave to you and explained to you.

On June 15, 2011, we gave to you:

- A copy of the Notice of Tree Removal that was posted; and
- 14 letters and emails that we received during the Notice of Tree Removal posting period (June 1, 2010 to June 30, 2010).

On June 27, we gave to you:

- Four emails exchanged between Dadisi Najib and Frank W. Lee on April 12, 2011.

On July 6, we gave to you:

- An April 12, 2011 email to Dadisi Najib from James DeVinny; and
- An April 12, 2011 email to Dadisi Najib, Gloria Chan, and James DeVinny from Frank W. Lee.

On August 8, we gave to you:

- The original cost estimate of \$101,625.50 that was produced in September 2010

On that same August 8, we also:

- Informed you that the final actual cost of the project is being calculated; and
- Explained to you which employees discussed and determined the sending of workers to work on the project on Sunday, March 27.

On August 12, we gave to you:

- A spreadsheet showing the actual total cost (\$229,039.80) and the labor hours spent; and
- Nine reasons for exceeding the original estimate (\$101,625.50).

On August 26, we gave to you:

- The date of the when the itemized estimated budget or cost for the project was approved, which was September 2010;
- Documents, including sketches, related to the original estimate (\$4,248.65) of the "tree support" that was also approved in September 2010;
- The name of the employee that produced the itemized estimated budget or cost for the project; and
- The name of the employee that approved that itemized estimated budget or cost for the project.

On August 29, we:

- Again, explained that the original tree support budget of \$4,248.65 was approved in September 2010; and
- Explained that the final actual cost of the tree support was \$23,561.

On September 9, we gave to you:

- Sketch of the tree base for the tree support that was actually built; and
- Sketch of the tree support and saddle, as part of the tree support, that were actually built

On that same September 9, we also:

- Explained to you how the approval of building the tree support (base, support and saddle) was made and, subsequently, why there were no documents showing this approval.

On September 12, we

- Again, stated that there were no documents showing approval of the building of the tree support.

On September 30, we

- Explained that we have no documents that shows discussions concerning "the overrun of cost of this project";
- Explained that we had already given to you the name of the employee that approved the \$101,625.50 original estimate and that there were no documents because his approval was done verbally; and
- Explained that there is no approval of the final cost because the \$229,039.80 expenditure was the actual cost of the entire project, not an estimate used for any approval or authorization.

On October 3, we:

- Explained that there were no documents, including any emails, that show approval and/or authorization of spending more than the original \$101,625.50 cost that was verbally approved at the beginning of the project.

And, finally, on October 7, we:

- Offered to arrange a meeting between you and the employees that made the original estimate and approvals so that you could discuss any concerns you had with them.

If you find that you are missing any of the above emails or documents in your email inbox, please let me know.

There are no documents, other than what were included in the documents that we gave to you (see above), that shows or are related to the approval and/or authorization of the Montgomery/Alta Street tree project. There are no documents, other than what were included in the documents that we gave to you (see above), that are related to the approval and/or authorization of the initial budget for the Montgomery/Alta Street tree project.

If you would like to meet, please let me know.

Sincerely,

Frank W. Lee

*Executive Assistant to the Director
Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sdpw.org*

From: Up Dog [mailto:upwardfacingdog@hotmail.com]

Sent: Sunday, October 09, 2011 6:49 PM

To: Lee, Frank W

CC: Up Dog

Subject: RE: Sunshine Ordinance request

Mr Lee,

No, I have not received any documents from your or from the Department of Public Works that address my current request - I have not received any such documents nor have I requested such documents.

I am not unclear about anything. What I am clear about is that I issued an official request under the Sunshine Ordinance of the City of San Francisco and that I did not receive a proper response.

You state that "Other than what we have already provided to you..." and "... we do not have any other documents...". Your statement and use of "other" implies there are documents that address my request. However, as I stated above, I have not received any documents from you or from the Department of Public Works that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project.

I submitted my official request under the Sunshine Ordinance of the City of San Francisco. You are obligated, under the Sunshine Ordinance of the City of San Francisco, to supply such documents and you did not. If the Department of Public Works does not have any documents that shows approval and/or authorization of the Montgomery/Alta Street tree project, or any documents that shows approval and/or authorization the initial budget for the Montgomery/Alta Street tree project, you need to explicitly and clearly state so.

Consequently, I consider that you have not responded to my request under the Sunshine Ordinance of the City of San Francisco.

Sincerely,
Lars Nyman

From: Frank.W.Lee@sfdpw.org
To: upwardfacingdog@hotmail.com
CC: upwardfacingdog@hotmail.com
Date: Fri, 7 Oct 2011 19:05:47 -0700
Subject: RE: Sunshine Ordinance request

Dear Mr. Nyman:

Other than what we have already provided to you in response to your previous requests, we do not have any other documents that would be responsive to your request, again, for documents that approves and/or authorizes the Montgomery/Alta street tree project and for documents that approves and/or authorizes the initial budget for the Montgomery/Alta street tree project.

Furthermore, I explained to you the approval method that was used and the names of the employees that produced the initial estimate and made the approval. If you are unclear about this and would like to discuss this with these employees, please let me know. I would be able to arrange a meeting for you.

Sincerely,
Frank W. Lee
Executive Assistant to the Director

Department of Public Works
Tel: (415) 554-6993
Fax: (415) 522-7727
Email: Frank.W.Lee@sfdpw.org

From: m m [mailto:upwardfacingdog@hotmail.com]
Sent: Thursday, October 06, 2011 10:32 AM
To: Lee, Frank W
Cc: Up Dog
Subject: Sunshine Ordinance request

Dear Mr. Lee,

In my email on 10/3/2011 to you I asked you a couple of questions. Since I have not received a response from you I am forced to submit an official Sunshine Ordinance request to get the information.

As a background, I have tried since April 2011 to get information from you and the Department of Public Works about the Montgomery/Alta Street tree project that was performed in early 2011. You have informed me that the amount in the budget for the Montgomery/Alta Street tree project that was approved was \$101,625.50. You have indicated that there are no documents showing any information or discussion about the cost overrun for this project, that there are no documents showing approval or authorization for spending beyond the initial budget for this project. In a comment, you also seem to have indicated there are no documents showing approval or authorization for the initial budget itself.

It seems somewhat surprising that there would be no documents approving or authorizing the initial budget for the project and the spending of money for this project. Since I had not issued an official request for that that information, and since I may have misunderstood your comments, to make sure I will make an official Sunshine Ordinance request to get to the bottom of this.

If there are no documents showing approval or authorization for the initial budget for the project, I am wondering if there are any documents showing approval and authorization of the project itself. Again, to get to the bottom of this I will make an official Sunshine Ordinance request below.

I am requesting documents under the Sunshine Ordinance of the City of San Francisco:

- 1- any documents, including emails, meeting minutes etc., that approves and/or authorizes the Montgomery/Alta Street tree project
- 2- any documents, including emails, meeting minutes etc., that approves and/or authorizes the initial budget for the Montgomery/Alta Street tree project

Note, the request for documents in this request is in addition to any other request I have made.
I look forward to receiving the information requested.

Sincerely,
Lars Nyman



1 Dr. Carlton B. Goodlett Place, City Hall, Room 348
San Francisco, CA 94102
(415) 554-6900 ■ www.sfdpw.org

Edwin M. Lee, Mayor
Edmund Nuru, Interim Director



February 27, 2012

Ben Rosenfield, City Controller
Office of the Controller
City Hall, Room 316
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Whistleblower Complaint #3698

Dear Controller Rosenfield:

Our department confirms that the actual cost of the "project" was \$229,039.80 and that the original cost estimate for the work was \$101,625.50.

Contrary to what the complainant described, the "project" was not a project to address a leaning tree at the intersection of Montgomery and Alta streets in North Beach but was roadway maintenance repair work to replace damaged roadway. When the final scope of work for replacing the damaged roadway was determined, we included measures to preserve an Italian Stone Pine tree in the Montgomery Street median at Alta Street.

The matter started with a citizen's report of tree roots from a tree in the Montgomery Street median damaging the surface of Montgomery Street and his parking lot. During our investigation of this report, we learned that there had been several reports of motor vehicles hitting low hanging limbs of this tree and confirmed that the Montgomery Street surface, adjacent to the tree in the median, needed repair.

Our department's first reaction was to remove the tree and reconstruct the roadway. However, after notifying the neighborhood of our intent to remove the tree, we received objections to this plan. Instead of removing the tree, some neighbors proposed that we divert vehicular traffic around the tree, which could also serve as a traffic calming device. The neighbors indicated that there were ongoing issues with vehicles speeding down the street.

This neighborhood proposal was then given to SFMTA and DPW engineers to determine whether the idea was sound and workable. The engineers concluded that reconstructing the roadway to divert vehicular traffic around the tree could become feasible. Therefore, DPW engineers began preliminary design. The \$101,625.50 preliminary cost estimate was the original construction cost estimate.

During construction, unforeseen circumstances, weather-related delays, and additional neighborhood requests caused cost to rise above the original estimate. DPW crews performed all of the work, except for the work related to the relocation of a low-pressure fire hydrant and water line. This relocation work was completed by the Water Department. We determined that the final labor and material cost for construction, including work by the Water Department, was \$229,039.80.

After the roadway maintenance repair work concluded, we reviewed our processes and implemented measures to prevent cost overruns on future such projects. These include:

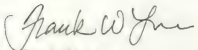
- Changing the way we determine preliminary cost estimates to better reflect how construction should or would occur on our city streets;
- Anticipating the ramifications to underground and above ground utilities and to private properties when we change the existing conditions of our street and sidewalk surfaces;
- Creating separate job order codes for each separate location requiring roadway repair work, thus, ensuring a central location for record keeping, cost control, and accountability for each roadway repair; and
- Implementing a system to better monitor construction costs and to better tabulate costs associated with unforeseen conditions, weather delays, and scope of work changes.


The report that follows will detail:


1. How the "project" became a roadway maintenance work, from initial awareness of a problem to gathering community input to proposing a solution;
2. How the preliminary cost estimate and preliminary design were identified;
3. How the final scope of work, which included final design and preliminary cost estimate, were determined;
4. How during the course of construction, the cost started to rise above the estimate; and
5. What measures our departments will take or took to ensure cost overruns that occurred on this roadway maintenance repair work will not happen in the future.

If you have any further questions regarding the final cost of this roadway repair and steps we are taking to ensure cost overruns are minimized in the future, please contact Paving Program Manager Ramon Kong at (415) 554-8280 or at Ramon.Kong@sfdpw.org. For questions regarding the health of and community's concerns about the subject tree, please contact Urban Forester Carla Short at (415) 641-2674 or at Carla.Short@sfdpw.org.

Sincerely,


Frank W. Lee
Executive Asst. to Director


Ramon Kong
Paving Program Manager


Carla Short
Urban Forester



Montgomery-Alta Roadway Repair

How the "project" became a roadway maintenance work

On May 20, 2010, Mr. Giampaolio (Paul) Boschetti contacted Mike Haase of City Attorney's Claims office and reported that tree roots from two trees on the median of Montgomery Street at Alta Street had damaged the street and the parking lot that he owns. In addition, Mr. Boschetti reported that there may be a lack of clearance for vehicles to pass underneath these trees.

Mr. Haase then contacted DPW and asked if the roadway could be repaired and if the trees could be removed to prevent damaging the roadway further. He also confirmed that the clearance underneath one of the trees was only 10 feet 10 inches, though the law requires a clearance of 14 feet.

Carla Short from DPW Urban Forestry met and discussed options with Mr. Haase, first. Ms. Short and her staff assessed the low-clearance tree and confirmed that the tree could not be pruned to gain clearance over the roadway because it was the main trunk that was leaning onto the road. In addition to the low clearance, any root pruning related to the repair of the street surface would likely lead to tree failure. Therefore, Urban Forestry recommended and posted the low-clearance tree for removal.

Posting of the tree is required by Public Works Code (Article 16) to allow for the public to comment on the recommended removal. If DPW received objections to the recommendation, DPW would then schedule a public hearing to consider the recommendation. The low-clearance tree was posted on June 1, 2010, with the public comment period ending on June 30, 2010.

At the same time, Ms. Short suggested to Mr. Haase that the damaged roadway should be referred to the Bureau of Street and Sewer Repair (BSSR), a separate bureau within DPW, for assessment and possible repairs.

Between June 1 and June 30, 2010, DPW received 12 written public comments. All 12 emails or letters opposed the recommended tree removal. Some even suggested that DPW should research and consider alternatives.

Meanwhile, on June 4, 2010, Leo LaRocca, attorney for Mr. Boschetti, sent a letter to DPW Director Ed Reiskin, requesting that the low-clearance tree be removed and that he be compensated for the damages caused by the tree. Director Reiskin replied and explained the tree removal process to Mr. LaRocca. He further added that Mr. LaRocca should continue to work with Mr. Haase regarding the damage to his property.

After sending his reply to Mr. LaRocca and learning that letters protesting the tree removal have been received, Director Reiskin met with DPW Bureau of Engineer (BOE) engineers and Ms. Short at the site to review the issue. At that time, he instructed the BOE engineers to identify funds for repairing the roadway, check if anything underneath the roadway may be causing

problems, and to develop a simple solution, including sketch and cost, to brace the tree. The brace was included to ensure that the roadway repair would not destabilize the tree.

On the same day, Director Reiskin informed the San Francisco Municipal Transportation Agency (SFMTA) of the issue.

On June 11, 2010, City Attorney's Claims office received claim against the City and County of San Francisco from Mr. Boschetti for damages to his parking lot.

On June 14, 2010, the BOE engineers confirmed that Montgomery Street at Alta is a street with a concrete surface and that the concrete needed replacing. Pavement Program Manager Ramon Kong from BOE then began to search for appropriate funds for the roadway replacement and instructed the engineers to begin formulating the work scope.

On June 22, 2010, Ms. Short informed Director Reiskin and SFMTA that the neighbors suggested installing a traffic calming chicane or bulb-out that would divert traffic around the low hanging tree limb with some sort of support for the tree limb as a solution. The neighbors also included a sketch with their proposal. They also indicated that the chicane could serve as a traffic calming device and that speeding was an issue on their block.

After SFMTA Traffic Engineer Manito Velasco reported that the neighbors' suggestion might work, if the neighborhood was willing to give up some parking spaces to ease traffic around the proposed chicane, the BOE engineers began reviewing the sketch and began incorporating the chicane idea into the roadway replacement work scope.

Between June 28, 2010 and July 14, 2010, the proposal to replace the broken roadway and incorporating the neighbors' chicane idea was vetted with other departments: SFPUC and SFFD. DPW consulted SFPUC, while SFMTA consulted SFFD. On June 29, 2010, the SFPUC confirmed that the sewer main underneath the damaged roadway was in good shape and did not need replacing. On July 14, 2010, Mr. Velasco reported that SFFD would be agree to the proposal if parking spaces were deleted to allow their rescue vehicles access.

Since it appeared that replacing the broken roadway with the chicane was workable, DPW postponed the public hearing to consider the tree removal from July 26, 2010 to the next tree removal hearing date, August 23, 2010, to allow engineers more time to formulate the work scope and identify roadway maintenance funds for the work.

On July 21, 2010 the BOE engineers developed a proposed work scope, which included replacing the concrete street surface, adding new curb-ramps, and installing a chicane, and a preliminary project cost estimate to use for funding purposes. On that same day, Mr. Kong confirmed that funding for the roadway repair had been identified and that funds would pay for the roadway replacement, curb-ramps, and chicane.

How preliminary cost estimate and preliminary design were identified and how the final scope of work were determined

In June 2010, the Department of Public Works (DPW), Bureau of Engineering, Streets and Highways Section, received a request for a cost estimate at Montgomery St and Alta St. The request stemmed from an inquiry regarding roadway condition and traffic safety along Montgomery St at Alta St. The scope of work included constructing two bulb outs, two curb ramps, and reconstructing a portion of concrete pavement. Based on the description of the scope of work from a field visit between SFMTA and DPW, a Streets and Highways engineer prepared a preliminary cost estimate of \$91,000. At that point, the purpose of the preliminary cost estimate was to gain an idea of the order of magnitude of the work based on the schematic conceptual scope of work. Upon issuance of a Notice of Intent to obtain utility clearances and funding availability, we requested BSSR to proceed with the roadway repair work. Typically, utility clearances potentially impact roadway construction schedules by causing delays, but because we were able to obtain the clearances, we were able to move forward with the project immediately. Based on a more refined design drawing, the preliminary estimated cost was \$101,625.50, which was funded by multiple roadway funding sources.

How during construction, cost started to rise above estimate

As previously mentioned, numerous factors contributed to the final cost of \$229,039.80. Their descriptions and explanations are as follows:

1. The cost estimate of \$101,625.50 assumed the construction would comprise of demolish the roadway completely and reconstruct the concrete pavement in a two step process.
 - a. The project was constructed in 7 phases in order to keep Montgomery Street and Alta Street open and accessible at all times.
 - i. The curb ramp and roadway reconstruction was done in 6 phases, and constructing the chicane was the 7th phase.
2. Daily inspection of the construction site was needed when crews could not work because of weather conditions or utility companies needed to perform work.
 - a. Rain storms were unforeseen conditions which caused delays and prevented DPW crews from working, but DPW crew members still inspected the construction site to ensure the area was safe and accessible to the public.
 - b. DPW crews could not work when PG&E needed access to perform their repairs during construction, but daily inspections continued.
 - c. DPW crews could not work when the Water Department crews relocated the water hydrant and its water line, which was not part of the original scope of work.
3. While constructing the curb ramp on the southeast curb return, the sidewalk needed to be lowered, exposing the foundation of the adjacent building.
 - a. DPW crews built a concrete curb wall to cover and protect the building foundation, which was not part of the original scope of work.

4. Residents in the area expressed concern that the grade of the new sidewalk replaced as part of the scope of work was too steep and pedestrians could slip.
 - a. To address the concern, grooves were scored into the sidewalk. This was not part of the original scope of work.
5. Demolition of and replacing of newly built road section to relocate a water line and water hydrant.
 - a. After the curb ramps, adjacent sidewalk, and concrete pavement part of phases 1 and 2 were completed, it was determined that the low pressure fire hydrant, which sat on top of the newly replaced sidewalk, needed to be relocated. This was not part of the original scope of work.
 - i. The water line extending from the street to the low pressure fire hydrant was too shallow and needed to be lowered, but this could not be possible without relocating a PG&E electrical duct bank that was located directly below the water line. This was discovered during the reconstruction of concrete pavement associated with Phase 3.
6. Relocation of the low pressure fire hydrant and water line to the opposite side of Alta Street.
 - a. The San Francisco Water Department crews completed the relocation. This was not part of the original scope of work.
7. Installation of metal plates to cover and protect shallow utility lines
 - a. Aside from the hydrant's water lines, other utility lines were also shallow. Because they did not interfere with the lowered roadway, they were not relocated. To address the issue of the utility lines being shallow, metal plates were installed between the utility lines and concrete pavement to cover and protect them. This was not part of the original scope.
8. Fabrication and installation of custom tree support and saddle.
 - a. During construction, residents expressed concerns regarding the original design of the tree support. The tree support was modified, which required the sheet metal shop to fabricate and install the tree support. In addition to providing labor and material to fabricate the tree support/saddle, crews were needed to frame the foundation, add re-bar, and pour the concrete foundation for the support/saddle. This was not part of the original scope of work.
9. Design modification to the chicane.
 - a. The original scope of work assumed a 6" curb, but some residents requested to be able to add landscape to the area within the chicane. To address the residents' request, the curb for the chicane was constructed higher and soil was backfilled into the chicane. The agreement was that the residents would add their own landscape at their own expense.

Measures our department will take or took to ensure cost overruns will not happen in the future

In order to ensure this type of overrun does not happen in the future, the department has and will continue to take the following steps:

- The Citywide Street Repair umbrella annual program will separate and create two job orders. The first job order will be used for street paving being done by BSSR. The second job order will be used to address public inquiries for miscellaneous repairs which include localized roadway repairs, reconstructing roadways, curb ramps, curbs, gutters, and sidewalks.
- Each inquiry will be assigned a location code which identifies the physical location and work scope. In addition, this improves accessibility of information related to the specific inquiry.
- BSSR will charge to the location code when working on the specific physical location.
- BSSR Superintendant will generate an expenditure document and report bi-weekly to the Project Manager on the work progress, potential scope changes, unforeseen conditions in the field, and potential cost increases.
- To improve construction cost estimating, BSSR will prepare construction cost estimates thru the Computerized Maintenance Management System (CMMS) system.
- The expenditure for each location code is reported bi-weekly by the BSSR Superintendent to the Project Manager and compared to the budget or cost estimate.
- If there is a cost increment on a location code, the Project Manager will stop charges against the location code. Upon review and approval from the Project Manager, if allowed on his/her overall program budget, a revised budget will be allocated for the location code.
- When work is completed by BSSR, the location code is closed out and confirmed by the BSSR Superintendent. Once closed, no additional charges can be made to that location.

Lee, Frank W

From: Lee, Frank W
Sent: Thursday, April 12, 2012 7:48 PM
To: 'Up Dog'
Cc: Nuru, Mohammed
Subject: RE: Your IMMEDIATE DISCLOSURE REQUEST #RR093
Attachments: CMMS.pdf; Location Codes.pdf; 1925J Actual to Budget.pdf

Dear Mr. Nyman:

Attached you will find:

- A chain of emails to and from Edmund Lee and various DPW employees regarding the implementation of Location Codes.
- Fiscal Year 11/12 Actual to Budget spreadsheet (to date 3/31/12) that shows inquiries or complaints listed by Location Codes under a separate job order, No. 1925J.
- Email from Ramon Kong to various DPW employees about training to implement CMMS.

As indicated on our report to the Controller, we have done the following:

1. Separated Street Repair work into two separate job orders. One job order would be for planned street repair work. The other job order would be for public inquiries or complaints that lead to actual action or repair work; in Fiscal Year 11/12, this would be job order No. 1925J.
2. Assign each inquiry under job order No. 1925J a separate location code. Thus far, in this Fiscal Year, there were 13. 12 of these has or will become construction repair under 1925J. The 13th location, R09, morphed into work that could be funded by a different funding source and was moved out from under 1925J.
3. Trained employees to use CMMS (Computerized Maintenance Management System) for work to be performed by BSSR (Bureau of Street and Sewer Repair) for Street Repair work that began as an inquiry or complaint.
4. Will start to use CMMS, which went live in the second half of March, for work to be performed by BSSR (Bureau of Street and Sewer Repair) for Street Repair work that began as an inquiry or complaint. CMMS process includes:
 - Requesting cost estimates from BSSR
 - BSSR submitting cost estimates for project manager or client's approvals
 - Approvals by project manager or client
 - Allocating funding based on approved cost estimates
 - Showing actual expenditures

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Up Dog [mailto:upwardfacingdog@hotmail.com]
Sent: Wednesday, April 11, 2012 2:17 PM
To: Nuru, Mohammed
Cc: Lee, Frank W
Subject: Re: Your IMMEDIATE DISCLOSURE REQUEST #RR093

Mr. Nuru,

Thank you for your response. In your response, you provided me with one letter addressed to the City Controller of San Francisco in which you describe, to the Controller, the measures DPW will take or has taken to ensure cost overruns will not happen in the future. I will assume that these measures are the "changes" Frank Lee alluded to by at the hearing on March 20, 2012, by the Compliance and Amendments Committee of the Sunshine Ordinance Task Force.

However, you did NOT provide me with ANY public records in connection with or with respect to the measures you described in that letter. And that is what I requested.

I did not request a description of the measures you and your department have taken – I requested the public records documenting (specifying, implementing etc.) these measures. I also requested any public records with respect to discussions about such changes prior to them being implemented or adopted or rejected. I did not receive any such records.

I therefore urge you to immediately provide the records I did request and do so according to the San Francisco Sunshine Ordinance rules and regulations for an IMMEDIATE DISCLOSURE REQUEST.

With respect to "any additional concerns that you may have and could help demystify our procedures to you", my concerns will be addressed by you producing the records I have requested – I don't see how a meeting will help you produce such records. If you do not understand what records I am requesting, then please let me know and I would be glad to elaborate to help you gain that understanding so you can produce ALL proper records - email correspondence seems to be both sufficient and efficient manner for that.

Sincerely,
Lars Nyman

From: Lee, Frank W
Sent: Tuesday, April 10, 2012 5:43 PM
To: <mailto:upwardfacingdog@hotmail.com>
Cc: Nuru, Mohammed ; Rivera, Patrick ; Kong, Ramon ; Sweiss, Fuad
Subject: Your IMMEDIATE DISCLOSURE REQUEST #RR093

Dear Mr. Nyman:

I am responding to your Immediate Disclosure Request that you submitted to Director Mohammed Nuru.

Attached you will find a letter to the Controller's Office in response to their investigation of the topic that is similar to yours. It explains what happened with the work at Montgomery/Alta, how it was initiated, how the cost escalated, and what our department has done to ensure such cost overruns will not occur again.

If you would like learn more about what happened and what steps were taken, I invite you again to meet with Paving Program Manager Ramon Kong; his supervisor, Patrick Rivera; and Deputy Director of Engineer Fuad Sweiss to discuss. Discussing in person would help us understand any additional concerns that you may have and could help demystify our procedures to you. Although you do not have to meet with us, we hope that you accept our invitation to meet.

You could contact Ramon at (415) 554-8280, Patrick at (415) 554-8221, and Fuad at (415) 554-6940. They are copied on this email response to you; therefore, if you wish to email them directly, you could. But, I would suggest that you contact me with your available times so that I can coordinate their schedule with yours. You could meet us here at City Hall.

This concludes your Request.

Although you could submit records requests to any DPW employee, please know that Public Records Requests to the Department of Public Works could be sent directly to me because I handle such requests for DPW. I can be reached via email at Frank.W.Lee@sfdpw.org or via Fax at (415) 522-7727. My direct telephone number is (415) 554-6993.

Sincerely,

Frank W. Lee

Executive Assistant to the Director

Department of Public Works

Tel: (415) 554-6993

Fax: (415) 522-7727

Email: Frank.W.Lee@sfdpw.org

From: Nuru, Mohammed

Sent: Monday, April 09, 2012 9:44 PM

To: Lee, Frank W

Subject: Fwd: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request

Sent from my iPad

Begin forwarded message:

From: Up Dog <upwardfacingdog@hotmail.com>

Date: April 9, 2012 7:31:28 PM PDT

To: "Nuru, Mohammed" <Mohammed.Nuru@sfdpw.org>

Subject: Re: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request

Mr. Nuru,

I submitted a request for public records on April 5, 2012 in an email to you with the subject line "IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request". Per San Francisco Sunshine Ordinance, SEC. 67.25. IMMEDIACY OF RESPONSE, you are obligated to satisfy the request no later than the close of business on the day following the day of the request.

However, as of April 9, 2012, I have not yet received a response from you. You are now therefore in violation of the San Francisco Sunshine Ordinance. Please provide the requested records immediately (by email to upwardfacingdog@hotmail.com).

Sincerely,

Lars Nyman

-----Original Message-----

From: Up Dog

Sent: Thursday, April 05, 2012 6:25 PM

To: mohammed.nuru@sfdpw.org

Subject: IMMEDIATE DISCLOSURE REQUEST - Sunshine Ordinance request

Mr. Nuru,

This is an IMMEDIATE DISCLOSURE REQUEST pursuant to the San Francisco Sunshine Ordinance.

--- BACKGROUND ---

As you know, over the last year, I have requested information and public records from the Department Of Public Works about the Montgomery/Alta Street project that involved cutting down or saving a tree and to repair the street. It has been an arduous process because your department has not been very forthcoming with requested records. Furthermore, there are several requests that your department still has not obliged with - I urge you to direct your staff to immediately oblige with these requests and comply with the provisions of California Public Records Act and the San Francisco Sunshine Ordinance.

I requested public records about what the budgeted cost of the project was, and was told that the original cost estimate was \$101,625.50.

I requested public records about what the total actual cost of the project was, and was initially told that no such documents exist. Eventually, I was told the total cost was \$229,039.80.

I requested public records about approval of spending beyond the original cost estimate, and was told there are no records showing approval of spending beyond the original cost estimate.

I requested public records about any discussions or concerns that the project cost was exceeding the original cost estimate, and was told there are no such records.

I requested public records about the approval of the original cost estimate, and have been told there are no records showing the approval of the original cost estimate.

I requested public records about the approval of the project itself, and have been told there are no records showing the approval of the project.

All of this is alarming and raises numerous questions about your department spending public funds without approval and that there were no discussions whatsoever when the spending on the project went far and beyond over the alleged original cost estimate. Was this an isolated incident, or is this

common practice in your department?

At a hearing on March 20, 2012, by the Compliance and Amendments Committee of the Sunshine Ordinance Task Force, the Executive Assistant to the Director of the Department Of Public Works, Frank Lee, addressed the committee and stated the following: "If you want to get to a point where you are saying is that the proper thing to do, and is that how your department operates. I can say, yes. But we know it's not right." Frank Lee continued: "We have since corrected that. But we didn't want, I mean we were welcoming Mr. Nyman to come discuss this with us, but he didn't want to come discuss this with us. I wished he did because if he did he would have given us support to make changes faster. But he didn't. We have made changes. We now seek authorization and..."

I find it incredible that the Department Of Public Works and Frank Lee attempts to shift ANY burden onto me and suggesting that my support in form of a meeting with the department was needed for you to have implemented changes sooner. In fact, my questions and requests starting in April 2011 should have been alarm enough for you about these defects, and if not, then an explicit statement to that effect on 7/28/2011 in an email to Frank Lee should have been sufficient. Therefore, frankly, I find it not only disingenuous but also insulting to suggest that I could have done something for you to make corrections sooner.

However, it is encouraging to hear that your department have "since corrected that", "made changes" and "now seek authorization" etc. I am now seeking information about what these changes in fact are.

--- IMMEDIATE DISCLOSURE REQUEST ---

This is a public records request pursuant to the provisions of California Public Records Act and the San Francisco Sunshine Ordinance for copies of any and all public records, in any form of media, in the custody or control of or maintained by the Department of Public Works or any staff member in connection with or with respect to the following:

- the changes that the Department of Public Works have made, alluded to by Frank Lee at a hearing on March 20, 2012, by the Compliance and Amendments Committee of the Sunshine Ordinance Task Force
- discussions about such changes prior to them being implemented or adopted or rejected

Note, I am requesting ANY and ALL records, regardless of source, in connection with or with respect to this matter.

This includes, but is not limited to:

- documents
- memos
- meeting minutes
- emails

If the requested records are kept electronically or in PDF format, please

send them in their original format by email to the above email address. If the records are kept in some other format, please scan them to PDF format and send them by email to the above email address. If the volume of requested records precludes delivery by email, please let me know of other delivery options, e.g. CD, DVD or ftp.

Please, note, this is an IMMEDIATE DISCLOSURE REQUEST pursuant to the San Francisco Sunshine Ordinance.

Sincerely,

Lars Nyman

upwardfacingdog@hotmail.com

Lee, Edmund

From: Lee, Edmund
Sent: Wednesday, August 24, 2011 2:45 PM
To: Lerma, Liz; Pisharath, Sreed; Kong, Ramon
Cc: Lee, Richard; Quintos, Jocelyn; McDaniels, Chris; Peralta, Nemesia; Fernandez, Mike
Subject: RE: Meeting Reminder 8/22/11 and Notes

Liz,

Location codes will only be assigned to inquiries where BSSR is to perform the recommended work. This includes localized repairs and improvements, not full block paving. The paving program will assign a location code to each of these inquiries.

Ed

From: Lerma, Liz
Sent: Wednesday, August 24, 2011 2:13 PM
To: Pisharath, Sreed; Kong, Ramon
Cc: Lee, Richard; Quintos, Jocelyn; McDaniels, Chris; Peralta, Nemesia; Fernandez, Mike; Lee, Edmund
Subject: RE: Meeting Reminder 8/22/11 and Notes

Does that mean that R01 would be roadway pavement inquiry #1 with the number from the inquiry log? For example, looking at the current inquiry log, if we repaired the first one on the list, 45th Ave: Balboa - Cabrillo, it would be listed as R01 roadway pavement inquiry #1: 0506-024?

From: Pisharath, Sreed
Sent: Tuesday, August 23, 2011 3:55 PM
To: Kong, Ramon
Cc: Lee, Richard; Quintos, Jocelyn; McDaniels, Chris; Peralta, Nemesia; Fernandez, Mike; Lerma, Liz; Lee, Edmund
Subject: RE: Meeting Reminder 8/22/11 and Notes

Sounds good.

From: Kong, Ramon
Sent: Tuesday, August 23, 2011 3:53 PM
To: Pisharath, Sreed
Cc: Lee, Richard; Quintos, Jocelyn; McDaniels, Chris; Peralta, Nemesia; Fernandez, Mike; Lerma, Liz; Lee, Edmund
Subject: Re: Meeting Reminder 8/22/11 and Notes

For description, please use:
"roadway pavement inquiry #1"... so on and so for.

Thanks,
Ramon Kong

On Aug 23, 2011, at 2:28 PM, "Pisharath, Sreed" <Sreed.Pisharath@sfdpw.org> wrote:

Below is the Location code set up screen. Per our last meeting, can I set up the location codes as follows, any suggestion?

R01 Description: Public ROW complaint #1
R02 Description: Public ROW complaint #2
Etc..

<image003.jpg>

From: Lee, Richard
Sent: Friday, August 19, 2011 3:24 PM
To: Quintos, Jocelyn; Kong, Ramon; McDaniels, Chris; Peralta, Nemesia; Pisharath, Sreed; Fernandez, Mike; Lerma, Liz; Lee, Edmund
Subject: Meeting Reminder 8/22/11 and Notes

Hi Everyone,

Reminder for BSSR Funding Allocation Meeting on Monday, 8/22/11 at City Hall Room 348 at 2:30pm.

Below are notes/follow up items from the last meeting:

- Updating the access database to create function to add concrete – Mike Fernandez/Liz Lerma to check with Jaime or Ephrem to create this
- Provide a spending plan for Labor and Non-labor related to each month – Liz Lerma/Chris McDaniels
- Look into activity codes – Mike Fernandez/Liz Lerma/Richard Lee

- Paving (concrete)
 - Paving (asphalt)
 - Sidewalk
 - Catchbasin
 - Curb Ramp
 - Sewer
- Creating separate Job Orders one for Big Gang Paving and one for Complaints/Inquiries – Ramon/Richard
- Look into adding an Admin or Time Keeper (Possibly interim 9922) for 6 months
- Usage of Location codes when charging work related to Complaints/Inquiries

Thanks,

Richard

CPWTRN SR25

VS

Location	Number of cases
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4th AVE (Lincoln to Hugo Street)
Columbus Street @ Green and Vallejo St.
16th Street So. @ Van Ness/Mission/Capp
Silver Ave @ University and Colby Street
Intersection of Fulton Street @ La Playa
Intersection of Geary Blvd to 11th Street
Intersection of West Clay St @ 24th Ave
Parnassus @ Hillway -03rd Street
Circular Ave @ Flood Ave. @ Baden St
Irving Street @ 19th Ave and 20th Ave.
So. Van Ness Mission SW 12th Street/Plum
Golden Gate @ Polk and Van Ness

\$	78,060	\$	18,991	\$	97,051	\$	284,535	\$	187,484
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Lee, Edmund

From: Kong, Ramon
Sent: Wednesday, February 15, 2012 3:28 PM
To: Nath, Christine
Cc: Lee, Edmond; Kjelsberg, Eric; Spielman, Kenneth; McDaniels, Chris; Lerma, Liz; Chorneau, Peter; Stringer, Larry; Naizghi, Ephrem; Lee, Edmond; Lee, Richard; Chavarria, Daniel; Omokaro, Eric
Subject: Re: CMMS: Training for Requests Assigned to SSR

Please also invite:
Edmund Lee
Richard Lee
Eric Omokaro
Daniel Chavarria

Thanks,
Ramon Kong

On Feb 15, 2012, at 2:14 PM, "Nath, Christine" <Christine.Nath@sfdpw.org> wrote:

I am currently working with SSR to implement CMMS for their work management system. The work that BOE assigns to SSR will be managed in CMMS. As SSR's clients, you will be able to:

1. Submit requests
2. Approve requests
3. Access information about these requests as the work is being performed

CMMS is scheduled to go live on 3/19. I'd like to schedule a 1.5 hour training session with you the week of 3/5. This will be held at 30VN – 5th Floor Training Room.

Please let me know if you have any questions, or if I've missed anyone who should attend.

Thanks and I look forward to our class together.

Christine Nath

CMMS Project Manager

christine.nath@sfdpw.org

415.742.1693



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

Date: January 31, 2013

To: Howard Lazar, Respondent
William Clark, Complainant

From: John St. Croix, Executive Director

Re: **NOTICE - Show Cause Hearing – Ethics Complaint 09-120703**

On July 3, 2012, the Sunshine Ordinance Task Force ("Task Force") delivered a referral letter to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance sections 67.30(c) and 67.34. The named Complainant is William Clark. The named Respondent is Howard Lazar. The Task Force referred "willful violation findings against Howard Lazar, Street Artists Program Director for the San Francisco Arts Commission."

After a hearing on August 23, 2011, the Task Force found that Mr. Lazar violated section 67.21(b) "for failure to release the public information to Mr. Clark within 10 days of receiving the public records request," section 67.21(e) "for failure to send a knowledgeable representative to the Task Force hearing," and section 67.22(b) for "failure to release public information to Mr. Clark on a timely and responsive basis."

The Task Force "further found Mr. Lazar had willfully violated these sections of the Sunshine Ordinance under Section 67.34 based on his pattern and practice of inadequate responses, repeated violations of the Sunshine Ordinance, and evident lack of intent to comply with the Sunshine Ordinance in the future." Mr. Lazar is not an elected official or department head.

The handling of this complaint was postponed until the Ethics Commission adopted regulations for Sunshine related complaints. Those regulations became effective on January 25, 2013. This matter will be heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"). Staff has scheduled this matter to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at 5:30 PM on Monday, February 25, 2013 in Room 400 in City Hall.

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (See Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his



or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (See Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission has not granted either party a continuance or rescheduled the matter under Chapter IV, section I.E, the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, February 8, 2013.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum; a copy of the Regulations is also attached.



FILED

2012 JUL -3 AM 8:07
SUNSHINE ORDINANCE
SANTO DOMINGO
TASK FORCE COMMISSION

BY _____



City Hall

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco 94102-4689

Tel. No. (415) 554-7724

Fax No. (415) 554-7854

TDD/TTY No. (415) 554-5227

May 18, 2012

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Referral of Willful Violation of the Sunshine Ordinance
Sunshine Complaint No. 11045, William Clark v. Arts Commission**

The Sunshine Ordinance Task Force ("Task Force") hereby refers willful violation findings against Howard Lazar, Street Artists Program Director for the San Francisco Arts Commission, in Sunshine Complaint No. 11045, *William Clark v. Arts Commission*.

This willful violation finding is referred for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby "complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission;" and
- (2) Sunshine Ordinance Section 67.30(c) which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance."

Background

William Clark filed a complaint with the Task Force on June 14, 2011 alleging that Howard Lazar violated public records laws by failing to respond to his May 27, 2011 request for information regarding a proposal for street artists space by the Hayes Valley Merchant Association.

Task Force Hearing on Complaint

On August 23, 2011, the Task Force held a hearing on the complaint. William Clark presented his complaint and Julio Mattos, contract clerk for the Arts Commission, appeared on behalf of

<http://www.sfgov.org/sunshine/>

Howard Lazar and presented the response. Mr. Lazar was not present at the hearing and had not provided a response to Mr. Clark prior to the date of hearing.

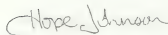
The Task Force found Mr. Lazar in violation of Sunshine Ordinance Sections:

- (1) 67.21(b) for failure to release the public information to Mr. Clark within 10 days of receiving the public records request;
- (2) 67.22(b) for failure to release public information to Mr. Clark on a timely and responsive basis; and
- (3) 67.21(e) for failure to send a knowledgeable representative to the Task Force hearing.

The Task Force further found Mr. Lazar had willfully violated these sections of the Sunshine Ordinance under Section 67.34 based on his pattern and practice of inadequate responses, repeated violations of the Sunshine Ordinance, and evident lack of intent to comply with the Sunshine Ordinance in the future.

An audio recording of the Task Force hearing on the complaint and supporting documentation is available on the Task Force's web site. Please contact the Task Force Administrator by email at sotf@sfgov.org or telephone at (415) 554-7724 to request this information be forwarded in hard copy format.

Thank you for your attention to this matter. Please confirm receipt of this notice to the Task Force Administrator.



Hope Johnson, Chair
Sunshine Ordinance Task Force

Encl.

cc: William Clark, Complainant
Howard Lazar, Street Artist Program Director, Arts Commission, Respondent
Jerry Threet, Deputy City Attorney

Date: August 23, 2011

Item No. 4 & 5

File No. 11045

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

<input checked="" type="checkbox"/>	William Clark against the Arts Commission
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____
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<input type="checkbox"/>	_____
<input type="checkbox"/>	_____

Completed by: Chris Rustom

Date: August 19, 2011

*This list reflects the explanatory documents provided

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

Direct Dial: (415) 554-3914
Email: jerry.threet@sfgov.org

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: June 21, 2011
RE: *Complaint No. 11045, William Clark v. San Francisco Arts Commission*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant William Clark ("Complainant") alleges that the San Francisco Arts Commission (the "Commission") violated the Ordinance by failing to respond to his May 27, 2011 email request for information answering a series of questions detailed in his complaint.

COMPLAINANT FILES COMPLAINT:

On June 14, 2011, Complainant filed a complaint with the Task Force alleging a violation of section 67.21(b) and 67.22(c).

JURISDICTION

The Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against the Arts Commission. The Commission did not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21(b) governs the time to respond to a request for a public record.
- Section 67.22 governs the release of oral public information.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Complainant alleges that the Commission violated the Ordinance by failing to respond to his May 27, 2011 email request for information answering a series of questions detailed in his complaint. Complainant further alleges that, at the time the complaint was filed, the Commission had not responded to his request in any way.

The Commission has not responded to the Complainant's allegations.

FOX PLAZA • 1390 MARKET STREET, 6TH FLOOR • SAN FRANCISCO, CALIFORNIA 94102-5408
RECEPTION: (415) 554-3800 • FACSIMILE: (415) 437-4644

n:\codent\as2011\9600241\00714650.doc

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 2
RE: *Complaint No. 11045, William Clark v. San Francisco Arts Commission*

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Commission complied with the requirements¹ of the Ordinance and the Public Records Act?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

¹ The Task Force previously has been advised that Section 67.22 requires that a department must designate a knowledgeable person to respond to oral inquiries from the public, so long as it would not take the designated representative longer than 15 minutes to find the responsive information. Because the Task Force has nevertheless found repeatedly that any City employee must respond to oral inquiries by the public, no additional analysis of this issue is again provided here.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 3
RE: *Complaint No. 11045, William Clark v. San Francisco Arts Commission*

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 4
RE: *Complaint No. 11045, William Clark v. San Francisco Arts Commission*

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.



<complaints@sfgov.org>

06/14/2011 06:13 PM

To <soft@sfgov.org>

cc

bcc

Subject Sunshine Complaint

To:soft@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:San Francisco Arts Commission

CONTACTED:Howard Lazar

PUBLIC_RECORDS_VIOLATION:Yes

PUBLIC_MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:Section 67.22(c) and Section 67.21(b)

DESCRIPTION:On September 21, 2009, a proposal to designate 4 new street artist selling spaces on Hayes Street which my brother and I presented to the SF Arts Commission and the Arts Commission approved was calendared to be heard by the Board of Supervisors' Land Use and Economic Development Committee. At that meeting, instead of voting on our proposal the committee put our proposal to the Call of the Chair. The committee did this as a result of being told by Mr. Cancel and Mr. Lazar that the Arts Commission was withdrawing their support for our proposal and instead supporting an alternative proposal offered to them by the Hayes Valley Merchants Association which would connect artists in the Street Artist Program with businesses and galleries in the Hayes Valley business district. Since we hadn't heard anything from the Arts Commission regarding the Hayes Valley merchant Association's alternative proposal since that time, we sent Howard Lazar the following email on May 27, 2011: Mr. Lazar, I am not requesting any documents but I would like an answer to the following questions: Has anything developed from the proposal Director of Cultural Affairs Luis Cancel and Mr. Lazar received in 2009 from Hayes Street Merchants President Russell Pritchard to commence, "a partnership" between the Arts Commission's Street Artists Program and the Hayes Valley Merchants Association "to connect artists within the Street Artists Program with Hayes Valley merchants . to develop and institute a program of matching up artists and merchants" which "will provide another avenue for local artists to show and to sell their work."? Has the Arts Commission and/or the Hayes Street Merchants done anything to implement the Hayes Street Merchant's alternative proposal to our proposal which was to designate 4 street artist sales spaces on Hayes Street? William J. Clark It has been more than 10 days since I sent Mr. Lazar the email and as of today, I have not received any response or information from Mr. Lazar regarding this public information request. We are requesting this information pursuant to the provisions of the San Francisco Sunshine Ordinance. William J. Clark Robert J. Clark

HEARING:Yes

PRE-HEARING:No

DATE:June 14, 2011

NAME:William J. Clark

ADDRESS:P. O. Box 882252

CITY:SF

ZIP:94188

PHONE:415-822-5465

CONTACT_EMAIL:billandbobclark@access4less.net
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No



Bill and Bob Clark
<billandbobclark@access4les
s.net>

To soft@sfgov.org

cc

bcc

07/29/2011 05:11 PM

Please respond to
Bill and Bob Clark
<billandbobclark@access4less
net>

Subject: Complaint #11045_William & Robert Clark v Arts
Commission

Hi Chris,

I would like you to put this email which includes a copy of the announcement by the Hayes Valley Merchant Association President Russell Pritchard about his alternative proposal to our proposal to designate 4 Street Artist selling spaces on the 300 block of Hayes Street.

This proposed partnership between the Hayes Valley Merchant Association, the SF Arts Commission and the Street Artist Program is the alternative proposal we were referring to when we asked Howard Lazar for information about its status which he refuses to provide us.

Howard Lazar's refusal to provide us with the information regarding the status of this Hayes Valley Merchant Association alternative proposal is why we filed our complaint #11045.

William J. Clark
Robert J. Clark

Announcement: A partnership between the SF Arts Commission, Street Artist Program, and The Hayes Valley Merchants Association.

Purpose: To connect artist within the Street Artist Program with Hayes Valley Merchants. This connection will provide a retail opportunity for the artists.

As President of the Hayes Valley Merchants Assn, I am pleased to work with Howard Lazar of the SF Arts Comm. Street Artist program, to develop and institute a program of matching up artists and merchants. I will create a data base of merchants interested in showing work by local artist and I will connect the appropriate merchant with the artists.

The merchants and artists will work together directly, to establish their working relationship. Our role is simply to orchestrate the connection. Many Hayes Valley Merchants currently show work by local artists, as I do in my store Zonal, this program will provide another avenue for local artists to show and to sell their work.

Russell Pritchard
Hayes Valley Merchants
415.255.9307

-----Original Message-----

>From: sotf@sfgov.org
>Sent: Jul '22, 2011 4:48 PM
>To: billandbobclark@access4less.net, Howard.Lazar@sfgov.org
>Cc: Jill Manton@sfgov.org, SanSan.Wong@sfgov.org, Kan.Htun@sfgov.org,
Alyssa.Licouris@sfgov.org, Adine.Varah@sfgov.org, pj@pjcommunications.com
>Subject: SOTF hearing reminder: #11045_William & Robert Clark v Arts
Commission
>
>
>This is a reminder that a hearing is scheduled with the Sunshine Ordinance
>Task Force, regarding the above titled complaint, to hear the merits of the
>complaint and to issue a determination.
>
>Date: Tuesday, July 26, 2011
>Location: City Hall, Room 408
>Time: 4:00 p.m.
>
>Complainants: Your attendance is required at this meeting/hearing.
>
>Respondents/Departments: Pursuant to Section 67.21 (e) of the Ordinance,
>the custodian of records or a representative of your department, who can
>speak to the matter, is required at the meeting/hearing.
>
>Attached is a copy of the Deputy City Attorney's Instructional Letter to
>the Task Force.
>
>(See attached file: 11045_Instructional.pdf)
>
>To access the agenda please click on the link below. Then click on the
>associated item number to access the packet material related to your item.
>
><http://www.sfbos.org/index.aspx?page=12112>
>
>Chris Ruston
>Sunshine Ordinance Task Force
>1 Dr. Carlton B. Goodlett Place
>City Hall, Room 244
>San Francisco, CA 94102-4689
>OFC: (415) 554-7724
>FAX: (415) 554-7854
>SOTF@sfgov.org



Bill and Bob Clark
<billandbobclark@access4less.net>

To: sotf@sfgov.org

cc

bcc

08/01/2011 01:14 PM

Please respond to
Bill and Bob Clark
<billandbobclark@access4less.net>

Subject: Complaint #11045_William & Robert Clark v Arts
Commission

Hi Chris,

I want a copy of this email put into the file for my complaint #11045.

I would like the task force members to read the portion of the minutes for the July 13, 2011 Street Artist Committee which I included below in this email.

Apparently, Mr. Lazar has the time to meet with and answer ALL the questions of 27 representatives of different cultural institutions from 15 provinces in China about the Street Artist Program and lottery system but he doesn't have the time to answer my questions about the Street Artist Program or have the time to meet with the Sunshine Ordinance Task Force and answer any questions the members of the task force would like him to answer.

William J. Clark

STREET ARTISTS COMMITTEE

Wednesday, July 13, 2011

3:00 p.m.

25 Van Ness Avenue, Suite 70
Minutes

Members present: Greg Chew, Chair, Amy Chuang, Sherene Melania, Jessica Silverman

Members absent: John Calloway

Staff present: Street Artists Program Director Howard Lazar

Commissioner Chew, Chair, called the meeting to order at 3:02 p.m.

1. Discussion. Street Artists Program Director's Report.

Street Artists Program Director Howard Lazar reported on the following:

Meeting with China Ministry: Mr. Lazar was approached by the China Ministry of Culture Delegation to discuss how the Street Artists Program works including lottery and licensing processes as well as the Arts Commission in general. On July 6, 2011, Mr. Lazar and Program Assistant Alyssa Licouris met with 27 individuals who represented different cultural institutions from 15 provinces of China and their interpreter. Mr. Lazar felt honored that the Ministry chose

to meet with the Street Artists Program.

Date: Oct. 25, 2011

Item No. 3

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- ☒ Draft Minutes: Task Force August 23, 2011
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

Completed by: Chris Rustom

Date: Oct. 20, 2011

*This list reflects the explanatory documents provided

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



<http://www.sfgov.org/sunshine/>

**SUNSHINE ORDINANCE TASK FORCE
REGULAR MEETING
DRAFT MINUTES**

Tuesday, August 23, 2011
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	David Snyder, Esq.	Seat 8	Bruce Wolfe (Vice chair)
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Hope Johnson (Chair)
Seat 4	Suzanne Manneh	Seat 11	Jackson West
Seat 5	Allyson Washburn		
Seat 6	James Knoebber	Ex-officio	(Vacant)
Seat 7	Jay Costa	Ex-officio	(Vacant)

Call to Order 4:20 P.M.

Roll Call Present: Snyder, Knee, Washburn, Costa, West, Johnson
Absent: Cauthen, Manneh, Knoebber, Wolfe, Chan

Agenda Changes: Item 27 heard after Item 2.

Deputy City Attorney: Jerry Threet
Clerk: Chris Rustom

Member Knee, seconded by Member Washburn, motioned to excuse Members Cauthen, Manneh, Knoebber, Wolfe and Chan.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Absent: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

1. 11048 Determination of jurisdiction on complaint filed by Pastor Gavin against Supervisor Chiu and Supervisor Mar for allegedly violating Sunshine Ordinance requirements for public notices and agendas.
Approx. 0:18:00

Member Knee, seconded by Member Snyder, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

2. 11048 Hearing on complaint filed by Pastor Gavin against Supervisor Chiu and Supervisor Mar for allegedly violating Sunshine Ordinance requirements for public notices and agendas.

Heard: Complainant Pastor Gavin presented her complaint. Speaking in support of the complainant were four member of the public who wished to remain anonymous, Laura Traveler of the Parkmerced Action Coalition, Mitchell Omerberg of the Affordable Housing Alliance and Steve Zeltzer of United Public Workers for Action. Lin-Shao Chin, an legislative aide to Supervisor Eric Mar, provided the response.

Member Knee, seconded by Member Costa, motioned:

- (a) to find Supervisor Eric Mar, the Chair of the Land Use Committee, in violation of Sections 67.7(b) for not providing any explanatory document that was provided to the policy body in connection with an agenda item, and Section 67.15(a) & (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of 14 pages of amendments.
- (b) to continue the item to the September Task Force meeting and name Board President Chiu, Supervisor Wiener and Supervisor Cohen, the two other committee members, as respondents.

Public Comment: Ray Hartz, Director San Francisco Open Government, said he supported the motion because the committee, knowing that there was a potential Sunshine Ordinance violation, disregarded the law and went ahead to vote on the item. Tomas Picarello said Board President David Chiu should also be accountable because he introduced the additional documents in question. He said Board President Chiu needs to explain why the documents were introduced without public comment. Nick Pasquarello said all the issues surrounding Board President Chiu and Committee Chair Mar have been discussed and needed to be voted on today and the others at another date.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

3. 11043 The Compliance & Amendments Committee has referred Case No. 11043 Alicia Gamez v Department of Public Health back to the full Task Force with a recommendation that it find all Noise Ordinance Task Force meetings, recommendations, and documents invalid, and monitor DPH compliance with the committee's order to produce records based on the Order of Determination.

Approx.
1:29:49

Heard: Complaint Alicia Gamez and Respondent Dr. Rajiv Bathia of the Department of Public Health provided the Task Force with a progress report in complying with the Order of Determination.

Members noted that the Noise Ordinance Task Force, which is expected to sunset in a few weeks, now knows the requirements of the Sunshine Ordinance, and that there was an ongoing dialogue and the production of records between both parties.

Member Washburn, seconded by Member Costa, motioned to send a letter to the Board of Supervisors, the Mayor, the City Attorney and the Department of Public Health to inform them how NOTS violated the public meeting requirements from the very beginning and the possibility of similar bodies violating the same rules, and that when similar bodies are created that the staff be made aware of the rules that govern it, and urge the Board of Supervisors to extend the life of NOTF for a certain period to allow for public participation.

Public Comment: Tomas Picarello said it was unfortunate that NOTF had a deputy city attorney on it and no advice was given to rectify the issue. He said the letter should also go to the Entertainment Commission because it also deals with noise. A neighbor of the complainant presented copies of 50 complaints that were filed with the Police Department. She said the inspector was only concerned by the noise made by the compressor and not the noise made by the patrons and other machinery associated with the business.

Matter concluded.

Five-minute recess declared.

4. 11045 Determination of jurisdiction on complaint filed by William Clark against the Arts Commission for allegedly violating Sections 67.22(e) and 67.21(b) of the Sunshine Ordinance.

Approx.
2:24:12

Member Knee, seconded by Member Costa, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson

Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

5. 11045 Hearing on complaint filed by William Clark against the Arts Commission for allegedly violating Sections 67.22(e) and 67.21(b) of the Sunshine Ordinance.

Heard: Complainant William Clark presented his case. Julio Mattos presented the Arts Commission's position.

Member Washburn, seconded by Member Costa, motioned to find Howard Lazar of the Arts Commission in violation of Sections 67.21(b) for not releasing the information within 10 days following receipt of the request, 67.22(b) for not releasing information on a timely and responsive basis, and 67.21 (e) for not sending a knowledgeable person to the hearing.

Based on the respondent's protracted pattern of responses; on respondent's repeated violation of the Sunshine Ordinance; and respondent's evident lack of intent to comply with the Sunshine Ordinance in the future, the Task Force finds Mr. Lazar in willful violation under Section 67.34 and has referred the matter to the Ethics Commission.

Public Comment: Robert Clark said Mr. Lazar attended last month's Task Force meeting and could have passed on the information. He said it was outrageous for Mr. Lazar to be able to answer numerous questions from a Chinese delegation but unable to answer one question from the Task Force.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson

Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

6. 11047 Determination of jurisdiction on complaint filed by Dorian Maxwell against the San Francisco Municipal Transportation Agency for allegedly not keeping withholding to a minimum.

Matter continued to September 27, 2011.

7. 11047 Hearing on complaint filed by Dorian Maxwell against the San Francisco Municipal Transportation Agency for allegedly not keeping withholding to a minimum.

Matter continued to September 27, 2011.

8. 11042 Determination of jurisdiction on complaint filed by Cynthia Carter against the San Francisco Municipal Transportation Agency for allegedly denying her access to her personnel file.

Approx.
2:58:00

Member Knee, seconded by Member Washburn, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson

Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

9. 11042 Hearing on complaint filed by Cynthia Carter against the San Francisco Municipal Transportation Agency for allegedly denying her access to her personnel file.

Heard: Complainant Cynthia Carter presented his case. Dorian Maxwell spoke in support of the complainant. Kathy Fowlis presented the San Francisco Municipal Transportation Agency's position.

Chair Johnson, seconded by Member Knee, motioned to find Caroline Celaya in violation of Sections 67.21(b) for not providing the documents in a timely manner, 67.21(c) for failure to direct the complainant to where the other documents could possibly be, 67.21(e) for not sending a knowledgeable person to the hearing, and that the MTA provide Ms. Carter with copies of the write ups from her supervisors, mechanical reports on defective busses and the complete Central Control reports relative to her case.

Public Comment: Ray Hartz, Director San Francisco Open Government, said Ms. Carter was at a total disadvantage at her hearing because she could not present a solid defense with facts and figures. A member of the public said it seemed that Ms. Carter's case was not an isolated incident because Mr. Maxwell also has to go through the same experience. He also said the City loses money when it has to hire attorneys when it gets sued for wrongful termination.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson

Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

Matter referred to Compliance and Amendments Committee.

10. 11046 Determination of jurisdiction on complaint filed by Charles Pitts against the Shelter Monitoring Committee for allegedly calling a recess to discuss an item while a meeting was in progress.
Approx.

Member Knee, seconded by Member Snyder, motioned to continue the matter to the September 27, 2011, meeting.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

11. 11046 Hearing on complaint filed by Charles Pitts against the Shelter Monitoring Committee for allegedly calling a recess to discuss an item while a meeting was in progress

See Item 10.

12. 11054 Determination of jurisdiction on complaint filed by Ray Hartz against Luis Herrera of the Public Library for allegedly failing to include his 150-word summaries in the body of the minutes.
Approx.
3:56:20

Member Knee, seconded by Member Costa, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

13. 11054 Hearing on complaint filed by Ray Hartz against Luis Herrera of the Public Library for allegedly failing to include his 150-word summaries in the body of the minutes.

Heard: Complainant Ray Hartz presented his case. The Public Library was represented by Sue Blackman and Library Commission Vice President Lee Munson.

Member Costa, seconded by Chair Johnson, motioned to find Luis Herrera of the Public Library in violation of Sections 67.15(d) for abridging public comment, 67.16 for not including the 150-word summary

in the body of the minutes, and 67.34 for willful violation.

Member Knee, seconded by Member West motioned to separate Section 67.15(d) from the motion.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

On the motion to find a violation of Sections 67.16 for not including the 150-word summary in the body of the minutes, and 67.34 for willful violation.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

On the motion to find a violation of Sections 67.15(d).

Public Comment: None.

The motion carried by the following vote:

Ayes: 4 - Snyder, Costa, West, Johnson
Noes: 2 - Knee, Washburn
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

Chair Johnson, seconded by Member Knee, motioned to rescind the vote.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

On the motion to find a violation of Sections 67.15(d).

Public Comment: None.

The motion failed by the following vote:

Ayes: 3 - Costa, West, Johnson
Noes: 3 - Snyder, Knee, Washburn
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

Five minute recess declared.

14. 11055 Determination of jurisdiction on complaint filed by Ray Hartz against Luis Herrera of the Public Library for allegedly failing to assist in identifying documents.

Approx.
4:48:00

Member Washburn, seconded by Member Knee, motioned to find jurisdiction.

Public Comment: None.

The motion carried by the following vote:

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson
Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

15. 11055 Hearing on complaint filed by Ray Hartz against Luis Herrera of the Public Library for allegedly failing to assist in identifying documents.

Heard: Complainant Ray Hartz presented his case. The Public Library was represented by Sue Blackman. Library Commission Vice President Lee Munson spoke in favor of Ms. Blackman.

No motion was made.

Matter concluded.

16. 11056 Determination of jurisdiction on complaint filed by Allen Grossman against Dennis Herrera and Jack Song of the City Attorney's Office for allegedly not responding to an Immediate Disclosure Request on a timely basis and not responding to a request for public information.

Continued to September 27, 2011.

17. 11056 Hearing on complaint filed by Allen Grossman against Dennis Herrera and Jack Song of the City Attorney's Office for allegedly not responding to an Immediate Disclosure Request on a timely basis and not responding to a request for public information.

Continued to September 27, 2011.

18. Issuing public reports evaluating compliance with the Sunshine Ordinance and related California laws by City Departments and Officials pursuant to Sec. 67.30(c).

Approx.
5:07:00

Members discussed the topic and, without objection, continued the matter to the September 27, 2011, meeting because quorum was about to be lost.

Public Comment: Ray Hartz, Director San Francisco Open Government, suggested creating a list of those who repeatedly violate a particular section of the ordinance and then seek their department head's input for inclusion in a report.

19. Amending Article VI, Sec. 1 of the Sunshine Ordinance Task Force By-Laws to eliminate or suspend the Complaint Committee. (discussion and action item)

No quorum.

20. Amending Article VI, Sec. 1 of the Sunshine Ordinance Task Force By-Laws to create a Technology Committee.

No quorum.

21. Supervisor of Records Report.

No quorum.

22. Approval of January 4, 2011, special meeting minutes.

No quorum.

23. Approval of January 20, 2011, special meeting minutes.

No quorum.

24. Approval of January 25, 2011, regular meeting minutes.

No quorum.

25. Report: Compliance and Amendments Committee meeting of August 9, 2011.

No quorum.

26. Administrator's Report.

No quorum.

27. Public comment on matters not listed on the agenda.

Approx.

1:28:15 None.

28. Announcements, comments, questions, and future agenda items from the Task Force members.

No quorum.

Adjournment

Having lost quorum with the departure of Member Snyder, the Task Force adjourned at the hour of 9:48 p.m.

This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force, Rm. 244, City Hall, No. 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102, Phone 554-7724 and at <http://www.sfbos.org/index.aspx?page=9811>

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION REGULATIONS FOR VIOLATIONS OF THE SUNSHINE ORDINANCE

Effective Date: January 25, 2013

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CHAPTER ONE

I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code section 54950, et seq.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.

J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).

O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

CHAPTER TWO

I. REFERRALS TO THE ETHICS COMMISSION

A. Matters to be heard in a Show Cause Hearing.

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:
 - a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or
 - b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.
2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

B. Scheduling of Show Cause Hearing.

1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.
2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

II. SHOW CAUSE HEARING

A. Public Hearing. The Show Cause Hearing shall be open to the public.

B. Standard of Proof. The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

C. Hearing Procedures.

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

D. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

E. Ethics Commission Orders.

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or

b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or

c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

F. Public Announcement.

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

CHAPTER THREE

**I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE
SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR
DEPARTMENT HEADS
OR
COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION
ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.**

A. Matters heard under this Chapter.

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.
2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.
3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.
4. This Chapter will govern:
 - a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and
 - b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.
5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

B. Scheduling of Hearing.

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

II. INVESTIGATION AND RECOMMENDATION

A. Factual Investigation.

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

B. Subpoenas.

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

C. Report and Recommendation.

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

a. that Respondent(s) willfully violated the Sunshine Ordinance;

b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or

c. that Respondent(s) did not violate the Sunshine Ordinance.

D. Response to the Report and Recommendation.

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

III. PUBLIC HEARING

A. General Rules and Procedures.

1. The hearing shall be open to the public.

2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.

5. Except when a complaint is staff-initiated or initiated pursuant to section 57.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

B. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.
3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

C. Ethics Commission Orders.

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:
 - a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
 - b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
 - c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

CHAPTER FOUR

I. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

C. Oaths and Affirmations.

The Commission may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

E. Extensions of Time and Continuances.

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

F. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.

3. Delivery is effective upon the date of delivery, not the date of receipt.

4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

G. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

H. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

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J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

II. SEVERABILITY

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

Provisions of the Sunshine Ordinance - Section 67

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Findings And Purpose.

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.2. Citation.

This Chapter may be cited as the San Francisco Sunshine Ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.3. Definitions.

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

- (a) "City" shall mean the City and County of San Francisco.
- (b) "Meeting" shall mean any of the following:
 - (1) A congregation of a majority of the members of a policy body at the same time and place;
 - (2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or
 - (3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.
- (4) "Meeting" shall not include any of the following:
 - (A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;
 - (B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or
 - (C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

- (1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;
- (2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;
- (3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.

(4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating city policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

- (1) The Board of Supervisors;
- (2) Any other board or commission enumerated in the charter;
- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
- (4) Any advisory board, commission, committee or body, created by the initiative of a policy body;
- (5) Any standing committee of a policy body irrespective of its composition.

(6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by charter or by ordinance or resolution of the Board of Supervisors.

(7) Any advisory board, commission, committee, or council created by a federal, state, or local grant whose members are appointed by city officials, employees or agents. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

Sec. 67.4. Passive Meetings.

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

(b) To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.5. Meetings To Be Open And Public; Application Of Brown Act.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.6. Conduct Of Business; Time And Place For Meetings.

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in section 67.7(c), and mailed notice if sufficient time permits. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.7. Agenda Requirements; Regular Meetings.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

- (1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.
- (2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).
- (3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.
- (f) Each board and commission enumerated in the charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.
- (g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

**KNOW YOUR RIGHTS UNDER
THE SUNSHINE ORDINANCE**

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

**FOR MORE INFORMATION
ON YOUR RIGHTS UNDER THE SUNSHINE
ORDINANCE OR TO REPORT A VIOLATION
OF THE ORDINANCE, CONTACT THE
SUNSHINE ORDINANCE TASK FORCE.**

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

Sec. 67.7-1. Public Notice Requirements.

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted. (Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

Sec. 67.8. Agenda Disclosures: Closed Sessions.

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

- (1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: Terms of payment: Both:

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

Unspecified to protect service of process

Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation:

As defendant As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

Police officers, firefighters and airport police

Transit Workers

Nurses

Miscellaneous Employees

Anticipated issue(s) under negotiation:

Wages

Hours

Benefits

Working Conditions

Other (specify if known)

All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.8-1. Additional Requirements for Closed Sessions.

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least TEN years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

(b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed. (Added by Proposition G, 11/2/99)

Sec. 67.9. Agendas And Related Materials: Public Records.

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any

record required to be disclosed by that act, whether or not distributed to a policy body. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.10. Closed Sessions: Permitted Topics.

A policy body may, but is not required to, hold closed sessions:

- (a) With the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.
- (b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.
- (c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual's performance.
- (d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:
 - (1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,
 - (2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.
- (g) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.
- (e) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters.
- (f) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.
- (2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

Sec. 67.11. Statement Of Reasons For Closed Sessions.

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.12. Disclosure Of Closed Session Discussions And Actions.

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Real Property Negotiations: Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision (b) of this section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) Litigation: Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the city's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by subdivision (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

(d) A written summary of the information required to be immediately reported pursuant to this section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.13. Barriers To Attendance Prohibited.

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the

overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

Sec. 67.14. Video and Audio Recording, Filming And Still Photography.

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

(c) Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above. (Added by Ord. 80-08, App. 5/13/08)

Sec. 67.15. Public Testimony.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.16. Minutes.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.17. Public Comment By Members Of Policy Bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.20. Definitions.

Whenever in this article the following words or phrases are used, they shall mean:

(a) "Department" shall mean a department of the City and County of San Francisco.

(b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

(c) "Supervisor of Records" shall mean the City Attorney. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

Sec. 67.21. Process For Gaining Access To Public Records; Administrative Appeals.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian

shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk,

tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

Sec. 67.21-1. Policy Regarding Use And Purchase Of Computer Systems.

- (a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.
- (b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:
 - (1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.
 - (2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.
 - (3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

Sec. 67.22. Release Of Oral Public Information.

Release of oral public information shall be accomplished as follows:

- (a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.
- (b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.
- (c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.
- (d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.
- (e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.23. Public Review File--Policy Body Communications.

- (a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.24. Public Information That Must Be Disclosed.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(i) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(i) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

(1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);

(2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

(3) The identity of a confidential source;

(4) Secret investigative techniques or procedures;

(5) Information whose disclosure would endanger law enforcement personnel; or

(6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories,

or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

Sec. 67.25. Immediacy Of Response.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.26. Withholding Kept To A Minimum.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.27. Justification Of Withholding.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.28. Fees For Duplication.

- (a) No fee shall be charged for making public records available for review.
- (b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed one cent per page may be charged, plus any postage costs.
- (c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed 10 cents per page may be charged, plus any postage.
- (d) A department may establish and charge a higher fee than the one cent presumptive fee in subdivision (b) and the 10 cent presumptive fee in subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.
- (e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.29. Index To Records.

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.29-1. Records Survive Transition Of Officials.

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco. (Added by Proposition G, 11/2/99)

Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes. (Added by Proposition G, 11/2/99)

SEC. 67.29-3.

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record. (Added by Proposition G, 11/2/99)

Sec. 67.29-4. Lobbyist On Behalf Of The City.

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, state, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, state, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this Ordinance.

(b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least \$300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, state, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on matters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens. (Added by Proposition G, 11/2/99)

Sec. 67.29-5. Calendars Of Certain Officials.

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date. (Added by Proposition G, 11/2/99)

Sec. 67.29-6. Sources Of Outside Funding.

No official or employee or agent of the city shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City. (Added by Proposition G, 11/2/09)

Sec. 67.29-7. Correspondence And Records Shall Be Maintained.

- (a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.
- (b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.
- (c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program. (Added by Proposition G, 11/2/99)

Sec. 67.30. The Sunshine Ordinance Task Force.

- (a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

- (b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

- (c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

- (d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.
- (e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

Sec. 67.31. Responsibility For Administration.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.32. Provision Of Services To Other Agencies; Sunshine Required.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The city shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the city with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed. (Added by Proposition G, 11/2/99)

Sec. 67.33. Department Head Declaration.

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force. (Added by Proposition G, 11/2/99)

Sec. 67.34. Willful Failure Shall Be Official Misconduct.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission. (Added by Proposition G, 11/2/99)

Sec. 67.35. Enforcement Provisions.

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed. (Added by Proposition G, 11/2/99)

Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply. (Added by Proposition G, 11/2/99)

Sec. 67.37. Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of

the remainder of this chapter, or the validity of its application to other persons or circumstances. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67a.1. Prohibiting The Use Of Cell Phones, Pagers And Similar Sound-Producing Electrical Devices At And During Public Meetings.

At and during a public meeting of any policy body governed by the San Francisco Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing electronic devices shall be prohibited. The presiding officer of any public meeting which is disrupted may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices. The presiding officer may allow an expelled person to return to the public meeting following an agreement by the expelled person to comply with the provisions of this Section. A warning of the provisions of this Section shall be printed on all meeting agendas, and shall be explained at the beginning of each public meeting by the presiding officer. (Added by Ord. 286-00, File No. 001155, App. 12/22/2000)





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Meeting of February 25, 2013

BENEDICT Y. HUR
CHAIRPERSON

MIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

1. Budget Update

At the last meeting, the Commission directed the staff to submit a budget proposal equal to last year's funding level. Staff submitted a budget proposal of \$2,597,220, a figure which would fully fund all existing positions of the department. This figure includes salaries, benefits and office expenses. In addition, another \$1,903,559.49 is requested for the annual funding required for the Election Campaign Fund. Thus, the total budget request for Fiscal Year 2013-14 is \$4,530,779.49.

2. Investigation and enforcement program.

As of February 15, 2013, there are 22 pending formal complaints alleging violations within the Ethics Commission's jurisdiction. At the Commission's regular meeting of January 28, 2013, three settlement agreements were approved – these agreements are available on the Commission's website.

Category	# of Complaints
Campaign Finance	12
Conflict of Interest	1
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	7
TOTAL	22

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on January 31, 2013 for the Second Semi-Annual statement, which covers the reporting period ending December 31, 2012. Staff identified 19 filers who will be sent a Non-Specific Written Notice. Staff continues to answer questions from and conduct outreach to candidates and other committee representatives about campaign finance filing obligations. The next filing deadline that applies to all filers is July 31, 2013 for the First Semi-Annual Statement, which covers the reporting period ending June 30, 2013. In the interim, staff continues to receive and process campaign statements for other filing deadlines.

b. Collection of late filing fees and contribution forfeitures. In the FY12-13, as of January 31, the Commission collected a total of \$31,118 in campaign finance late fees

and forfeitures. Outstanding late fees and forfeitures total \$18,009, of which waiver requests are pending for \$2,185; and \$6,659 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						TOTAL	\$6,659

4. Revenues report.

For FY 12-13, the Commission was budgeted to generate \$100,000 in revenues. As of February 19, 2013, the Commission received \$ 85,362 as summarized below. The figure represents collection of approximately 85 percent of expected revenues for FY 12-13.

Revenues received as of February 19, 2013:

Source	Budgeted Amount FY 12-13	Receipts
Lobbyist Fees	\$27,000	\$42,625
Other Ethics General	\$1,000	\$96
Campaign Finance Fines	\$50,000	\$31,118
Campaign Consultant Fees	\$18,000	\$5,450
Lobbyist Fines	\$1,000	\$550
Statements of Economic Interests Fines	\$1,000	\$2540
Other Ethics Fines	\$1,000	\$1,300
Campaign Consultant Fines	\$1,000	\$150
Unallocated	\$0	\$1,533
Total	\$100,000	\$85,362

5. Lobbyist program.

As of February 15, 2013, 83 individual lobbyists were registered with the Commission. For FY 12-13, as of February 15, 2013, total revenues collected were \$42,625, including \$42,075 in lobbyist registration fees and \$550 in late fines. The filing deadline for the next lobbyist disclosure statement is March 15, 2013.

6. Campaign Consultant program.

As of February 14, 2013, eighteen campaign consultants were registered with the Commission. \$5,450 in registration fees and \$150 in fines have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Friday, March 15, 2013. Staff will send reminders to all active campaign consultants two weeks before the deadline.

7. Outreach and Education.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training
- SIA Template Language Training

The Commission has scheduled two trainings for filing officers regarding the annual Statement of Economic Interests filings that are due April 2, 2013. The first training was held on February 6 and the second will be held on March 5, 2013 at 10 a.m. in Room 421 City Hall.

On February 14, 2013, a California Berkeley Investigative Journalism class visited the Ethics Commission office to learn more about using various financial disclosure statements to investigate candidates and elected officials. Staff informed the class about the Commission's mission to adhere to, and actively enforce, ethics laws and rules. Staff spoke about the different types of financial disclosure statements and how members of the public can use this information to keep themselves informed. Considering this class was formed to teach students about investigating possible violations of the law, the students' questions were directed towards how to read the information on various statements and, more so, how to understand the various connections between the different financial disclosure statements.

On January 31, at their invitation, I made a presentation to the Seattle City Council about the workings and successes of our Public Finance Program. That same day, I participated in a public finance workshop with the Seattle Ethics Commission in order to help them form potential proposals to create a public finance program for their city. That evening, I repeated my earlier presentation for members of the general public. Joining me for these events were staff from the Los Angeles Ethics Commission and a representative from the Portland League of Women Voters. Our presentations and discussion were well received at each of the three sessions mentioned above.

8. Budget and Legislative Analyst's Report.

On June 5, 2012, the Budget Analyst issued a report comparing the laws of the City and County of San Francisco and the City of Los Angeles. The report examined four areas of policy and enforcement: campaign financing, enforcement and education, lobbying, and transparency. On December 4 and 10, 2012, staff held interested persons meetings to obtain feedback on the policy options listed by the Budget Analyst. Based on concerns raised, staff will convene another interested persons meeting on February 27, 2013 at 3:00 p.m. in Room 400 City Hall. Staff hopes to bring recommendations to the Commission at a future meeting.

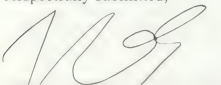
9. Status of legislative proposals endorsed by Ethics Commission.

Amendments to Section 1.112 of the Campaign and Governmental Conduct Code, approved by the Commission at its meeting on July 23, 2012, passed second reading by the Board of Supervisors on January 29, 2013 and were signed into law by the Mayor on February 4, 2013. They will go into effect on March 6, 2013. The amendments include the following changes:

- Committees that are required to file electronic campaign finance statements will no longer be required to file duplicate paper copies;
- Committees will be required to file electronic statements if the committee receives contributions or makes expenditures that total \$1,000 or more in a calendar year;
- County Central Committee candidate controlled committees and primarily formed committees will be required to file electronically; and
- Any committee not required to file electronic statements may voluntarily opt to file electronic statements.

The amendments to Section 1.112 were made possible as a result of the staff's work on Assembly Bill 2452 that was approved on July 13, 2012.

Respectfully submitted,



John St. Croix
Executive Director

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[DRAFT]

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
February 25, 2013
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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I. Call to order and roll call.

Chairperson Hur called the meeting to order at 5:31 PM. Chairperson Hur stated that Commissioner Hayon was excused due to illness. He also noted that since all five Commissioners were not present, Agenda Item V would be deferred to a future meeting.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamieenne Studley, Vice-Chairperson; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner. Commissioner Hayon was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Josh White, Deputy City Attorney (DCA) (excused ~ 6:45 PM); Jon Givner, DCA (arrived ~ 6 PM).

OTHERS PRESENT: Peter Warfield; Ray Hartz; Luis Herrera, City Librarian, San Francisco Public Library; Sue Blackman, Library Commission Secretary; Patrick Monette-Shaw; Robbie Clark; Dr. Derek Kerr; Allen Grossman; Paula Datesh; George Wooding; Phil Ginsburg, General Manager of Recreation & Parks Department; Ray Bellar; Nancy Werfel; Suzanne Dumont; Jane Kwok; Eric S.; Catherine Howard; Judy Burkowitz; Bruce Wolfe; David Pilpel; Mark Buell, President of the Recreation & Park Commission; Sarah Ballard, Director of Policy and Public Affairs, Recreation & Parks Department; Greg Miller; Anne Clark; Caroline Celaya, San Francisco Municipal Transportation Agency; Kathy Fowles, San Francisco Municipal Transportation Agency; Frank Lee, Executive Assistant to the Director of the Department of Public Works; Howard Lazar, Program Director of the Street Artists Program, Arts Commission; William Clark; Robert Clark; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Regarding Agenda Item III(a): Ethics Complaint No. 03-120402 – notice letters from the Commission staff to Complainant and Respondent(s); staff report with recommendation and attachments, and any documents submitted to the Commission by Complainant and/or Respondent(s);
- Regarding Agenda Item III(b): Ethics Complaint No. 15-111205 – notice letters from the Commission staff to Complainant and Respondent(s); staff report with recommendation and attachments, and any documents submitted to the Commission by Complainant and/or Respondent(s);
- Regarding Agenda Item IV(a): Ethics Complaint No. 15-111205 – copies of all documents received from the Sunshine Ordinance Task Force, notice letters from the Commission staff to the Respondent(s) and Complainant, and any documents submitted to the Commission by the Respondent(s) and/or Complainant;
- Regarding Agenda Item IV(b): Ethics Complaint No. 04-120507 – copies of all documents received from the Sunshine Ordinance Task Force, notice letters from the Commission staff to the

- Respondent(s) and Complainant, and any documents submitted to the Commission by the Respondent(s) and/or Complainant;
- Regarding Agenda Item IV(b): Ethics Complaint No. 07-120621 – copies of all documents received from the Sunshine Ordinance Task Force, notice letters from the Commission staff to the Respondent(s) and Complainant, and any documents submitted to the Commission by the Respondent(s) and/or Complainant;
- Regarding Agenda Item IV(b): Ethics Complaint No. 09-120703 – copies of all documents received from the Sunshine Ordinance Task Force, notice letters from the Commission staff to the Respondent(s) and Complainant, and any documents submitted to the Commission by the Respondent(s) and/or Complainant;
- Ethics Commission Regulations for Violations of the Sunshine Ordinance;
- Sunshine Ordinance, Chapter 67 of the San Francisco Administrative Code;
- Draft minutes of the Commission's regular meeting of January 28, 2013;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the ethics commission.

Peter Warfield asked the Commission to clarify the policy for public comment during agenda items III and IV. Chairperson Hur stated that public comment would occur during each sub-item.

III. Discussion and possible action on matters submitted under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance.

Agenda Item III(a) – Ethics Complaint No. 03-120402 – regarding alleged willful violation of Sunshine Ordinance by department head (referred from the Sunshine Ordinance Task Force on April 2, 2012).

Complainant Ray Hartz stated that willful ignorance of what one ought to know is a mortal sin. He read a portion of section 67.16 of the Sunshine Ordinance. He stated that most people have agreed with his interpretation of section 67.16 – that the “brief written summary” provided by a speaker of his or her comments must be included in the body of the minutes. He stated that the Sunshine Ordinance Task Force (“Task Force”) has determined multiple times that the summary should be included in the body of the minutes. He stated that the Library Commission and Mr. Herrera have repeatedly ignored the Task Force's Orders of Determinations on the matter. He also referenced a memorandum from the City Attorney and that office's *Good Government Guide* (“Guide”). He stated that the City Attorney stated that the summary may be attached as an addendum, but the Task Force is the body that is supposed to interpret the Sunshine Ordinance. He stated that Mr. Herrera would like to continue ignoring the Task Force's findings as he and the Library Commission do not like what has been said and would prefer to keep the comments out of the official record. He stated that he has been raising this issue regarding the minutes for almost two years. He asked the Commission to ask other questions, such as why the Library Commission has chosen to ignore the Task Force's findings. He stated that the City Attorney's advice is not accurate. He stated that Mr. Herrera chose to put his employees and others in a position where they had to ignore the recommendations of the Task Force. He stated that Mr. Herrera's willfulness was clear and that he has been acting in bad faith.

Respondent Luis Herrera, City Librarian, San Francisco Public Library, stated that a memorandum from Commission Secretary Sue Blackman was submitted earlier in the day. He stated that the Library Commission has followed section 67.16 of the Sunshine Ordinance. He stated that the Commission has followed advice from the City Attorney and what was provided in the *Guide*. He stated that the memorandum from the City Attorney that Mr. Hartz referenced earlier was provided to the Commission.

He stated that, following the lead of the Ethics Commission, the Library Commission has incorporated the summaries into the minutes and will follow the same modification. He asked that the Commission find no violation.

In his rebuttal, Mr. Hartz stated that Mr. Herrera has been presenting the same argument for the last three years. He stated that Mr. Herrera sent Ms. Blackman to Task Force meetings, as he did not have the integrity to explain to the Task Force why he did what he did. He stated that the Library Commission made a conscious decision to put the summaries somewhere else and the comments are taken out of context. He stated that his statements were also treated differently in the Library Commission meeting minutes than other speakers' summaries. He stated that there has been no discussion at the Library Commission regarding the example provided of the format of the minutes going forward. He stated that there is no evidence that the Library Commission will format its minutes this way or that it would not change the format again in the future.

Public Comment:

Patrick Monette-Shaw stated that the Ethics Commission is here to enforce provisions of the Sunshine Ordinance. He stated that the Ethics Commission is not here to allow Dennis Herrera's *Guide* to supersede or trump the Sunshine Ordinance. He stated that there are many things in the *Guide* that are not worthy of being used as toilet paper and gave page 89 of the *Guide* as an example. He also stated that backup tapes exist for daily use and are easily accessible when something is deleted. He stated that the *Guide* needs to be re-written.

Robbie Clark stated that he has attended Arts Commission meetings for 40 years. He disagreed with the practice of commissions using three minutes as a maximum for public comment, especially when there are not many members of the public present. He stated that the City Attorney was wrong. He supported a finding against Mr. Luis Herrera.

A member of the public stated that he submitted summaries to the Library Commission for many years and the summaries would not be included as required by the Sunshine Ordinance. He stated that the Library Commission only did things after being forced to do them. He stated that when rich people offer them money, they accept that money.

Dr. Derek Kerr stated that excluding public comment from the body of the minutes is an act of disrespect. He stated that it is a statement that the members of the public are inferior to the people on the boards or commissions and that it is a widespread problem. He stated that the Library should provide some commitment or promise regarding their proposed permanent policy change to the minutes.

Allen Grossman stated that inclusion of a speaker's summary in the body of the minutes is a plain reading of section 67.16. He stated that it is nonsensical to add in quasi-legal concepts. He stated that the Task Force's job is to determine these issues and its determinations are enforceable. He disagreed with the *Guide*. He read a definition of the word "in."

Paula Datesh endorsed Mr. Hartz's statements. She stated that it is important to include the summary in the body of the minutes.

Peter Warfield stated that the Library's abuse of the public has been a longstanding one. He stated that the Library Commission has had a history of attempting to exclude public comment. He asked the Commission to find in Mr. Hartz's favor.

Commissioner Liu asked Mr. Herrera whether the minutes provided (in the proposed format) had been adopted by the Library Commission. Mr. Herrera stated that the Commission has not yet adopted it and

clarified that the format would apply to all summaries. Commissioner Renne asked Mr. Herrera why he was so resistant to putting the summary in the body of the minutes. Mr. Herrera stated that the Commission worked with the City Attorney's Office and followed the Guide and believed it was in compliance with the Ordinance by attaching the summaries. He stated that all commissions and boards appeared to be complying with section 67.16 in the same way. Chairperson Hur asked whether the summaries were part of the same document or a separate document from the minutes that are approved by the Library Commission. Sue Blackman, Library Commission Secretary, stated that everything was in one document.

Commissioner Renne asked Mr. Hartz whether the proposed format of the minutes, assuming they are adopted and implemented, would cure his concern. Mr. Hartz stated that it would not. He stated that there had been too many variations of minutes and that all speakers' comments were not recorded in a uniform fashion within the minutes of one meeting. He stated that the Library Commission has not established a clear policy of how it will handle its minutes.

Commissioner Studley stated that a violation of section 67.16, on the specific question of whether the summaries were included in the record of the meetings, was not included in the referral from the Task Force. She stated that the minutes provided were paginated as a single document, including the addendum. She stated that the Task Force cannot add or imply the words "in the body of the minutes" into the Sunshine Ordinance. She stated that there also was no mention in the Task Force referral that summaries from different speakers were being treated differently in the Library Commission's minutes. She stated that, as it was not part of the record, there was nothing the Ethics Commission could do about it during this meeting. She stated that the Ethics Commission changed its policy on minutes because it was responsive and that the public would find it as evidence of good faith, but not because the Ethics Commission was in violation of the law. She stated that she did not find such a violation. Commissioner Studley also noted that the summaries provided by members of the public are not validated by the Commission or Board. She stated that minutes are generated by the Secretary or Clerk of the body and approved as part of the business decisions of the body. She stated that the summaries are different from the minutes approved by the body. She also added that it was clear from the comments that there has been frustration with the Library Commission, but that the Ethics commission has to look at the complaint it has before it and decide on that matter. She stated that the complaint is about the placement of the summaries and not the 10-year frustration with the Library Commission.

Commissioner Renne agreed with Commissioner Studley's conclusion in that he did not find a willful violation. He stated that he agreed with Mr. Hartz about how a summary may be an inaccurate summary of the speaker's comment. He stated that if the Library were to retreat from its policy of including the speaker's written statement in the future, then the Library would be willfully violating the Sunshine Ordinance.

Commissioner Liu agreed with the conclusion. She stated that, as there was ambiguity between the advice of the City Attorney and the findings of the Task Force, there was no willful violation. Chairperson Hur agreed.

Motion 13-02-25-1 (Renne/Liu): Moved, seconded, and passed (4-0; Hayon excused) that the Commission find no violation of the Sunshine Ordinance with respect to Agenda Item III(a).

Mr. Hartz asked the Chair to address the comments of the Commission.

Agenda Item III(b) – Ethics Complaint No. 15-111205 – regarding alleged willful violation of Sunshine Ordinance by department head (referred from the Sunshine Ordinance Task Force on December 5, 2011).

Complainant George Wooding stated that the hearing would have been unnecessary if Olive Gong had contacted the Department of Technology and looked for the department's archived records. He stated that Ms. Gong provided the e-mails 141 days after he made his request. He stated that the Task Force had asked Ms. Gong to contact DT and that she had not done so. He stated that the information provided on page 89 of the *Guide* likens DT files to something that would be found in a dumpster. He stated that Recreation and Parks Department (RPD) abused the First Amendment rights of private citizens and deliberately deleted documents. He stated that RPD changed the title, panelists, and content of a presentation at the Commonwealth Club. He stated that the program related to the commercialization of the public park, specifically mentioning installing artificial turf at the Beach Chalet. He stated that Sarah Ballard wrote a letter to someone at the Commonwealth Club and asked them to change the meeting. He read the e-mail from Ms. Ballard, dated April 20, 2011. He stated that Phil Ginsburg and Mark Buell also contacted the Commonwealth Club regarding the presentation and they stated that the panelists were "inadequate" and "biased." He stated that the Club "caved in" and then he received documents from the Commonwealth Club. He stated that he requested documents from RPD and was told that none exist, even though he was in possession of copies of them. He stated that RPD wanted to protect itself and did not want conflicting viewpoints. He stated that the RPD is a public agency and it was going after private citizens. He stated there was a bigger issue than section 67.35.

Respondent Phil Ginsburg, General Manager of RPD, asked the Commission to adopt the findings of staff and dismiss the complaint. He stated that there has been no violation of the Sunshine Ordinance and the charges lack merit. He stated that the RPD has a tremendous amount of respect for the Sunshine Ordinance and that the department responded to 175 records requests in 2012. He stated that RPD devotes almost an entire full-time employee to requests. He stated that, in this case, there were no documents. He stated that the charges have been separated for the other named Respondents. He stated that the Club was having a public discussion about Golden Gate Park and the RPD asked for representation on the panel. He stated that he deleted the e-mail, where he was copied, as it was not an essential or legal record and did not require any departmental action. He stated that Mr. Gooding made his request on June 3 and Mr. Ginsburg responded on June 6.

In his rebuttal, Mr. Wooding asked the Commission to look at the bigger picture. He stated that one of the communications involved a lobbyist and that the matter involved saving a field. He stated that the department attempted to limit public discussion. He added that the previous Chair of the Task Force, Hope Johnson, stated that the documents should have been retained. He stated that public officials were signing e-mails with public titles and that Mr. Ginsburg was clearly complicit as he was getting e-mails from Mark Buell, the Commission President. He stated that Mr. Ginsburg helped plan it or helped orchestrate the effort and that Ms. Ballard acted at his request. He stated that these actions were a group effort.

Public Comment:

Patrick Monette-Shaw stated that Mr. Ginsburg is being disingenuous. He stated that Mr. Ginsburg told Ms. Gong that he did not have any e-mails, but he could have told her that he had already deleted responsive documents. He stated that, in that case, Ms. Gong could have immediately turned to DT backup tapes. He also stated that state law prohibits department heads from destroying a record less than two years old. He stated that the Ethics Commission needs to notify Dennis Herrera that he needs to rewrite the *Guide*. He disagreed with staff's recommendation that there is no requirement in the Sunshine Ordinance for departments to refer members of the public to private entities. He stated that Ms. Gong should have referred Mr. Wooding to DT.

Ray Bellar stated that Mr. Ginsburg and other City officials and employees went out of their way to use their official titles to influence the presentation at the Commonwealth Club. He stated that he was

disturbed that Ms. Ballard stated that the scheduled panelists were unqualified and biased. He stated that this case deeply undermines the public's faith and desire to work with the government. He stated that the records should not have been deleted.

Dr. Derek Kerr stated that the e-mail Mr. Ginsburg deleted is not the kind of correspondence that one deletes because it is of no value as a record. He stated that one would delete the e-mail in order to conceal what it contains. He stated that this matter could be reduced to a technical, legal point that would make it easy to dismiss, but that this is an ethics commission. He stated the ethical dimension should be considered and not just loopholes.

Nancy Werfel stated that Mr. Ginsburg is guilty of a willful violation of the Sunshine Ordinance. She stated that Mr. Ginsburg is a former City Attorney and he objected to the panel at the Commonwealth Club. She stated that he did not want a discussion about a controversial decision to be discussed in a forum he could not control. She stated that Ms. Gong should have referred Mr. Wooding to DT. She asked the Commission to consider all of the relevant circumstances, including Mr. Ginsburg's motive. She stated that the Commission should find him in willful violation in order to assure public confidence in the body.

Peter Warfield stated that he supported Mr. Wooding's request and position. He referred to section 67.29-7 of the Sunshine Ordinance.

Suzanne Dumont stated that RPD is aware of the Task Force and RPD's obligations under the Sunshine Ordinance. She stated that it is most egregious that the public is paying people to deceive it. She stated that RPD is abusing the public trust.

Allen Grossman stated that this matter reminds him of the missing minutes from the Nixon tapes. He stated that, when the request came into RPD, there was an obligation to look through everything. He referred to California Government Code section 6252. He stated that it was a violation that Olive Gong did not look at the backup tapes.

Jane Kwok stated that Mr. Wooding really loves San Francisco and devotes his time to the City. She said that he is held in high esteem.

Eric S. stated that Mr. Wooding told him that RPD is raising revenues at the expense of the public. He stated that the Task Force found a violation and he was unsure how their findings could be overturned. He stated that RPD should have kept these e-mails and that this case is similar to Watergate. He asked the Commission to come to the right conclusion.

Ray Hartz agreed with the comments of many other speakers. He stated that the department feels no responsibility to correct mistakes. He stated that RPD staff should not be allowed to unilaterally decide when to delete records. He stated that Ethics staff has a clear conflict of interest in this matter, as the Task Force found a similar violation against Executive Director St. Croix. He stated that the Commission cannot have someone giving it advice when he is unwilling to be honest that he may be affected by the Ethics Commission's decision. He stated that the City Attorney has no right to interpret the Sunshine Ordinance and that job lies with the Task Force.

Catherine Howard stated that the City planned to remove seven acres of living grass and add artificial turf and also have lighting on until 10 PM daily. She stated that RPD tried to stifle free speech and then denied that they tried to do it. She stated that the Commonwealth should have been permitted to hold its discussion.

Judy Burkowicz stated that the Respondents violated sections 67.21(c), 67.25, 67.26, and 67.27 of the Sunshine Ordinance. She asked the Commission to cite them accordingly. She stated that the event was a private one and it was organized at a private venue. She stated that it was irrelevant whether the Commission believes the documents were deleted.

Bruce Wolfe stated that RPD relied on its own records retention policy. He referred to San Francisco Administrative Code section 8.1. He stated there was no label of "essential" records, as Mr. Ginsburg mentioned. He stated that if the Ethics Commissioners have not read section 8.1 of the Administrative Code, then the Commission should continue this item.

David Pilpel stated that he agreed with most of Mr. Wolfe's comments. He stated that the e-mails in question were improperly deleted, as they were in relation to a continuing matter. He also referred to section 67.29-7 of the Sunshine Ordinance.

Commissioner Liu asked Mr. Ginsburg what the RPD's protocol is for looking for backup data when responding to Sunshine requests. She stated that the request was made just a few weeks after the events in question. Mr. Ginsburg stated that the department worked with the City Attorney, but that he is not sure whether looking at the backup tapes at DT is a routine practice. He stated that the department would do it when asked to do it. Mr. Ginsburg stated that he did not remember whether he told Ms. Gong that he had deleted any e-mails. He stated that there were no e-mails from the "sfgov" account from DT's search of the tapes. Mr. Ginsburg explained how he searched his records when the request came in from Mr. Wooding. He stated that he has about 50 file folders, but that he can perform a search through his entire account at one time. He stated that RPD's e-mail is kept on a centralized server.

Commissioner Renne asked whether there is a standard of time used to delete a document when Mr. Ginsburg decides it belongs in Category 4. Mr. Ginsburg stated that he would delete it the next time he has a chance to manage his inbox.

Commissioner Studley asked whether there is a standard City-wide policy when handling Sunshine requests. She stated that it seems unreasonable for the public to know to ask for documents from backup tapes or from some other source. DCA Givner stated that he was not aware of a City-wide policy, but that departments search their own records. He stated that departments do not ask DT to look at backup tapes. He stated that DT's search is a time-consuming process, especially considering how many requests come into the City every day. Commissioner Studley noted that once documents are deleted, they are no longer that agency's documents, but possibly DT records. She asked what the agency's responsibility is and the standard practice. DCA Givner stated that the City Attorney generally advises agencies that the Sunshine Ordinance does not require the City to look at backup tapes for documents that were deleted properly. Commissioner Studley stated that it is hard to know what responsibility each agency has when there are not common standards regarding both deletion of records and what records to search.

Chairperson Hur stated that the question before the Commission is whether Mr. Ginsburg committed a willful violation of the Sunshine Ordinance. He stated that the main question is whether Mr. Ginsburg conducted a search for the records. He stated that his reading of the retention policy is that the e-mail received would fall under Category 4. He stated that whether the category is acceptable under the Administrative Code is not one that can be adjudicated now. DCA Givner stated that the City Attorney works with departments on their own records retention policies. He stated that the City Attorney ensures that the policy complies with local and state laws.

Commissioner Renne asked Mr. Wooding whether he received the same documents from DT, after they performed the search. Mr. Wooding stated he received only 2 or 3 documents from DT. He stated that Ms. Gong did not know what was going on and that Mr. Buell, Mr. Ginsburg, and Ms. Ballard never

spoke for themselves. He stated that RPD never treated this as a serious issue and that he did not believe Mr. Ginsburg.

Chairperson Hur referred to an e-mail, dated April 25, 2011, on page 235 of the December 2011 Task Force packet. He stated that the e-mail clearly expressed Mr. Buell's opinion about the panel, but it does not suggest some official action. He stated that this e-mail falls under Category 4. He stated that he understood Mr. Wooding's frustration, as the deletion could have been for the reasons he said. He stated that, however, it does not appear that retention was required.

Commissioner Renne stated that sections 67.26 and 67.27 of the Sunshine Ordinance were inapplicable and that he did not think section 67.21(c) of the Sunshine Ordinance required that RPD advise Mr. Wooding to go to the Commonwealth Club. He also stated that, with respect to section 67.25 of the Sunshine Ordinance, there was no doubt that the response the RPD gave was a correct response, as there were no responsive documents.

Commissioner Studley agreed that there is no requirement in section 67.21(c) for an agency to send the requestor to the Commonwealth Club. Commissioner Liu stated that the request came in only a few weeks after the e-mails and there may have been recollection at the time that he had deleted an e-mail. She stated that, as there is no City-wide policy regarding backup tapes in response to Sunshine requests, there cannot be a finding of a willful violation.

Motion 13-02-25-2 (Renne/Studley): Moved, seconded, and passed (4-0; Hayon excused) that the Commission find Mr. Ginsburg did not willfully violate sections 67.21(c), 67.25, 67.26, or 67.27 of the Sunshine Ordinance.

Commissioner Studley stated that it would be helpful to identify issues regarding the interpretation of rules or agency practice. She stated that the Commission could speak with the City Attorney regarding these issues and have future meeting discussions regarding possible law changes or guidance on how City agencies could be more consistent. The Chair agreed.

IV. Discussion and possible action on matters submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance.

Agenda Item IV(a) – Ethics Complaint No. 15-111205 (referred from the Sunshine Ordinance Task Force on December 5, 2011).

[Respondent Olive Gong was not present.]

Respondent Mark Buell, President of the Recreation & Parks Commission, stated that he reviewed his e-mails and responded within 12 hours of receiving a request from Ms. Gong. He stated that he did not find any e-mails. He stated that he heard about the panel and saw the title and felt that the panel was one-sided. He stated that he contacted the Commonwealth Club regarding representation from the RPD. He stated that there was no conspiracy with staff and that he reluctantly agreed to sit on the panel. He stated that he has changed his personal habit and now does not delete anything. He stated that these e-mails were communication with people he had communicated with in the past. He stated that it was not a Commission issue. He also stated that the e-mails accurately represent what he felt then and now.

Respondent Sarah Ballard, Director of Policy and Public Affairs, spoke on Ms. Gong's behalf. She stated that Ms. Gong's role in the department is to receive document requests and ask people whether there are any responsive documents. She stated that she had searched her records and stated that she keeps her e-mail similarly to how Mr. Ginsburg described his e-mail account. She stated that her inbox was her "to

do” list and she keeps all others in file folders. She stated that she searched her records and did not have any responsive documents.

Complainant George Wooding expressed his disappointment in the way the Commission bifurcated the matter. He stated that Sunshine will suffer and the public will suffer if the public loses confidence in the government. He stated that Ethics now represents the City family more than the public and that he has little confidence of any fairness.

Commissioner Studley asked whether the documents he received were provided by RPD staff. Mr. Wooding declined to answer the question.

In his rebuttal, Mr. Buell stated that he searched all Commonwealth Club meetings for two years and could not find any title that had a similar degree of bias or where only one side of an issue was being considered.

In her rebuttal, Ms. Ballard stated that RPD’s archived e-mails are now kept in the department. She stated the archived e-mails had previously been maintained by DT.

Public Comment:

Greg Miller stated that Ms. Ballard stated that the people involved with the panel would incite the community. He stated that Ms. Ballard had asked the Club to cancel the event. He stated there was clear evidence that members of RPD directly reporting to the Director tried to prevent the public from meeting and speaking. He stated that City officers and employees should not use their titles to try to prevent members of the public from meeting independently.

Bruce Wolfe stated that he was very concerned. He stated that DCA Givner was wrong and that documents are stored and the law states that retrieval must be had whether in storage or not. He stated that the only things that cannot be retrieved are those that can be destroyed. He stated that the City Attorney cannot represent any one individual, except for litigation. He urged the Commission to continue the item and read Administrative Code section 8.1.

Nancy Werfel stated that a response that says “we have no responsive documents to your request” means that “we never had any responsive records.” She stated that if there is a record, the public needs to know that there is somewhere else to go, such as DT. She stated that Ms. Ballard accused the panel of being deeply biased and that Ms. Ballard has no interest of hearing or speaking of the facts. She stated that Ms. Ballard has been found guilty and that she is not being forthcoming with this body.

Anne Clark stated that these local and state laws exist because government activity must be transparent as possible. She stated that the government could be saying things about members of the public without their knowledge.

Judy Berkowitz stated that she has been in every Supervisor’s office and met with every aide and the Mayor’s aide. She stated that she does not know anyone who deletes e-mails. She stated that RPD appears to be the only department that does.

Catherine Howard stated that the Commonwealth Club often has issues that are one-sided. She stated that Ms. Ballard wrote an e-mail and used her title. She stated that, without being provided with copies of the e-mails, no one would have know they existed. She asked what would happen when a whistleblower is not there to provide the documents. She asked the Commission to help the public get accountability.

David Pilpel stated that he believed there is a violation, but not necessarily of the sections listed by the Task Force. He also stated that he was unsure whether the violation was willful. He agreed with Commissioner Studley's suggestion to catalog issues to discuss in the future.

Chair Hur asked Ms. Ballard why she did not retain her e-mail from April 20. Ms. Ballard stated that she does not retain sent e-mails, regardless of the importance of the e-mail. She stated that she had no sent file folder in her e-mail account.

Commissioner Studley asked Mr. Buell about his search for responsive documents. Mr. Buell stated that he looked under Dalton and Commonwealth Club, but that his e-mails seemed outside anything before the Commission and that he knew Mr. Dalton well so that was why he had e-mailed him. He also clarified that the City Attorney had not represented him in this matter. Mr. Buell stated that he had searched his BlackBerry and thought he searched both sent and received e-mails.

Chairperson Hur asked Mr. Wolfe about the RPD's retention policy. Chairperson Hur stated that an employee who follows his or her own retention policy cannot be found in willful violation of the Sunshine Ordinance. Mr. Wolfe stated that the RPD's retention policy is not correct, but stated that the e-mails should have been retained under Category 2. Chairperson Hur stated that these specific violations alleged do not reach whether the document should or should not have been retained. He stated that Ms. Ballard may not have been following her record retention policy, if she does not save any e-mails she sends.

Commissioner Liu stated that her focus is on section 67.21(c), whether any of them should have informed Mr. Wooding that there were e-mails and they were deleted. She stated that the e-mails were not in their custody anymore.

Commissioner Studley stated that all three responded, but that Ms. Gong responded for the department and responded late. She stated that the Sunshine Ordinance is not about whether one remembers, it is about production of records. She stated that it would be excruciating to draw a line between something that was so voluminous or old or some other thing. She stated that Ms. Gong was going to be held at risk for failing to compel the rest of her colleagues to do something other than what was the department's records retention policy.

Chairperson Hur asked Ms. Ng to add the issue of searching backup files in response to Sunshine requests to the list of future discussion topics. He asked DCA Givner his view on the failure to retain a document that should have been retained. DCA Givner stated that the Ordinance requires department heads to retain records in a professional manner, which the City Attorney's Office has always interpreted as consistent with the department's records retention policy. He stated that section 67.29-7 (as interpreted by the City Attorney) does not require that a department head keep every one-line e-mail that crosses his or her desk. DCA Givner also briefly explained the "rule of reason." He stated that the department has to make reasonable efforts to find a document. He also stated, however, that it would be unreasonable for a department to find every e-mail from the last 20 years. He stated that the general rule may also apply to the backup tapes, as the search would entail a large amount of resources to be used for that request. He stated that the purpose of the Sunshine Ordinance was to deal with disclosure of documents that have been retained. He stated that a separate chapter of local law deals with records retention.

Chairperson Hur stated that there was a violation of section 67.25 by Ms. Gong with respect to failure to provide documents within the required time period. He stated that Mr. Buell, Ms. Ballard, Mr. Ginsburg, and others responded and Ms. Gong did not provide a response to Mr. Wooding in a timely fashion. He also recommended that Ms. Ballard maintain some documents that she was, but found no violation of sections 67.26, 67.27, or 67.21(c). DCA Givner stated that, as the Commission was conducting a hearing

er Chapter Two of the Regulations, there was no need to determine willfulness. Chairperson Hur
ed why Ms. Ballard had been included in the referral from the Task Force under willful failure.

A Givner stated that, when the Task Force makes a referral under Chapter Two of the Regulations, the
pondent (a City official or employee) has the burden to show that the violation did not occur.
ommissioner Renne agreed with DCA Givner and stated that the Commission could find there is
lence of a violation, but not a willful violation. He stated that it may be a violation, but not something
requires great admonition. He also stated that the department is required to check its files when
tested. He stated that a department is not expected to respond and say “no, we do not have any
uments and we may have deleted it.”

tion 13-02-25-3 (Studley/Liu): Moved, seconded, and passed (4-0; Hayon excused) that the
ics Commission find Ms. Gong violated section 67.25 for failure to respond in a timely fashion to
mediate disclosure request and that the Commission did not find a violation by the other
pondents as to the other three section codes referred by the Task Force (sections 67.21(c), 67.25,
6, or 67.27 of the Sunshine Ordinance).

irperson Hur then stated that the department was late in its response, but it was not particularly
gious. He suggested that staff write a letter to the department telling it to comply with section 67.25
e future and that document requests need to be responded to in a timely manner. Commissioner
ley agreed. She suggested adding the topic for future discussion of how a City agency may respond
n Immediate Disclosure Request.

ak from 9:18 PM to 9:31 PM.]

id Pilpel stated that he, as Chair of the Education and Outreach Committee of the Task Force, would
appy to work with staff regarding the items listed for future discussion.

**Agenda Item IV(b) – Ethics Complaint No. 04-120507 (referred from the Sunshine
Ordinance Task Force on April 30, 2012).**

pondent Caroline Celaya stated that she had submitted a response to the Commission last week. She
id that she and Kathy Fowlis, who responded to part of Ms. Carter’s original request, were available
nswer questions from the Commission. She acknowledged that the department was late in providing
e of the documents, but stated that they had attempted to work with the Complainant. She stated that
was following a previous ruling by the Task Force, where a privacy waiver had been required to be
ed prior to the release of documents. She stated that she was the point of contact for all document
ests made to SF Municipal Transportation Agency (MTA). She stated that the complaint had stated
she had not received her personnel files, which is why Ms. Fowlis responded, as she is the custodian
MTA personnel files. She stated that the department disagrees with the Complainant’s assertion that
did not receive her own personnel files.

omplainant Cynthia Carter was not present.]

ic Comment:

id Pilpel stated that he did not necessarily agree with MTA’s analysis that labor is required for certain
rds. He stated that MTA has a single point contact to coordinate responses to document requests. He
d that he was not sure if a violation of 67.21(c) occurred and that it is debatable whether a violation
ection 67.21(e) occurred.

Commissioner Liu asked what documents the Complainant had yet to receive. Ms. Celaya stated that the Complainant had received her personnel file. She stated that the Complainant requested copies of certain documents and those copies were sent to the Complainant via certified mail. Ms. Celaya also stated that there were privacy concerns for other documents, such as medical files or workers compensation files. She stated that some redacting may need to occur, but that the Complainant must sign the waiver. Ms. Celaya also stated that the Complainant had signed the waiver, but added some language which made it illusory. She stated that after signing the waiver, the documents could be released to any member of the public who requests her records.

DCA Givner stated that the City could perhaps provide the documents under other laws, but not through a Sunshine request. Commissioner Studley asked whether the matter belonged in front of the Ethics Commission at all. DCA Givner stated it did not. Commissioner Studley then asked about other, non-personnel or medical records that the Complainant requested. Commissioner Renne asked what kind of information was contained in other files. Ms. Fowles stated that the files would contain the Complainant's medical diagnosis, any treatment she received, any illnesses she may have had, and any requests for leave that she may have made. Commissioner Renne asked whether the Complainant could obtain these records outside of the Sunshine Ordinance. Ms. Fowles stated that the Complainant could and is also able to review every document at her request. She also stated that, if it were not part of a Sunshine request, it would be different. Ms. Fowles stated that the Complainant came into the department to review her personnel files and was told of this in person. She stated that there is an alternative path for the Complainant to obtain those files, without signing a waiver. Chairperson Hur stated that it appeared to be a better alternative for the Complainant to get the documents without going through a Sunshine request. He did note that the response was not made in a timely manner, but did not find a violation of sections 67.21(c) or 67.21(e) of the Sunshine Ordinance.

Motion 13-02-25-4 (Renne/Liu): Moved, seconded, and passed (4-0; Hayon excused) that the Ethics Commission find Ms. Gong violated Sunshine Ordinance section 67.21(b) for failure to respond in a timely manner to a records request; the Commission also did not find violations of sections 67.21(c) or 67.21(e) of the Sunshine Ordinance.

The Commission directed the staff to issue a letter explaining that MTA should provide timely responses to document requests in the future.

David Pilpel noted that neither of the Complainant's original written requests referred to the Sunshine Ordinance.

Agenda Item IV(c) – Ethics Complaint No. 07-120621 (referred from the Sunshine Ordinance Task Force on June 20, 2012).

Respondent Frank Lee, Executive Assistant to the Director of the Department of Public Works (DPW), stated that his department responded fully to the Complainant's request. He stated that the Complainant received hundreds of documents and was also asked to meet with DPW staff if he had further questions. He stated that he had prepared CDs with responsive documents and provided them.

[Respondent Mohammed Nuru was not present.]

[Complainant Lars Nyman was not present.]

Public Comment:

David Pilpel stated that DPW has gone above and beyond with respect to this document request. He stated that, as Mohammed Nuru was listed as Respondent, this matter should have been bifurcated and Mr. Nuru

and have been handled under Chapter Three of the Commission's Regulations. He suggested with respect to the matter with respect to Mr. Lee only.

Executive Director Ng stated that Mr. Nuru was the acting department head at the time, but that the matter was not referred to the Ethics Commission as a willful violation and therefore is being handled under Chapter Two of the Regulations.

Chairperson Hur stated that it was shocking that there were no documents explaining the approval for a 100% project or that the project went over 130%. Mr. Lee stated that DPW was shocked as well. He stated that he had contacted the people in charge of the project, when seeking responsive documents.

Commissioner Liu stated that it appeared the department had conducted an exhaustive search of documents and it appeared that there were no other responsive documents. Chairperson Hur agreed.

On 13-02-25-5 (Liu/Renne): Moved, seconded, and passed (4-0; Hayon excused) that the Ethics Commission find that Respondents Lee and Nuru have met their burden and find no violation of sections 67.21(c) or 67.21(e) regarding this complaint.

Agenda Item IV(d) – Ethics Complaint No. 09-120703 (referred from the Sunshine Ordinance Task Force on July 3, 2012).

Chairperson Howard Lazar, Program Director of the Street Artists Program at the Arts Commission, presented written statements to the Commission at the beginning of the meeting. Mr. Lazar stated that he acknowledged that he failed to respond in a timely manner during the Task Force hearing. He stated that a representative read a prepared statement from Mr. Lazar and provided the responses to the Complainant. He stated that he had drafted a reply, after receiving the request, but the reply failed to be sent. He stated that he had apologized. With respect to the alleged violation of section 67.21(e), he stated that the City Attorney's Office had advised him that a representative may attend the Task Force meeting(s), as long as the representative could accurately provide the Arts Commission's response. He stated that he had prepared the response and that his representative read and it was reviewed by DCA Adine Varah.

Complainant William Clark stated that he started the street artists licensing program forty years ago. He stated that Mr. Lazar and his representative left during the July Task Force hearing. He stated that he had been waiting for years for artist spaces in Hayes Valley. He stated that Mr. Lazar simply had to respond to the complaint and he would not have filed a complaint. He stated that he simply wanted an answer.

Chairperson Lazar stated that the Task Force also charged that he had willfully violated the Sunshine Ordinance based on his "pattern of repeated violations." He stated that he had personally responded to 100 requests during the last two years, spending approximately 227.5 hours. He stated that the Task Force's finding is subjective and contrary to the advice of the Office of the City Attorney. He disagreed with the Task Force's finding that there is an "evident lack of intent to comply with the Sunshine Ordinance in this matter."

Comment:

Chairperson Clark stated that he was present during the July Task Force meeting and that Mr. Lazar did not attend the entire meeting. He stated that all of the other complaints that he and his brother have filed against Mr. Lazar have ended up with violations against Mr. Lazar and the Arts Commission. He stated that Mr. Lazar's representative had no knowledge on the issues involved with the complaint. He asked the Commission to listen to the Task Force meetings. He stated that Mr. Lazar always knew the response to the question asked and he willfully withheld the information.

Paula Datesh stated that she had made document requests to the Arts Commission and not received a response. She stated that she had been slandered and the Arts Commission staff does not respond to e-mails or phone calls. She endorsed the Clark brothers.

Chairperson Hur asked Mr. Clark whether his Task Force complaint accurately reflected his request made to Mr. Lazar in that it was “not a document request.” He asked DCA Givner whether the public may request a written response to questions. DCA Givner stated that the Sunshine Ordinance does not require City departments to create a document in response to a request. He stated that departments, under section 67.22, must work with someone who is requesting oral information.

Commissioner Studley stated that she also had the same concern, as Mr. Clark stated that he was not requesting documents. DCA Givner stated that section 67.22 requires a department to provide public information in a timely way, but does not have to sit down and provide a lengthy discussion. He stated that the department is not required to spend more than 15 minutes for these types of requests. He reiterated that the Sunshine Ordinance does not require the City to create any records.

David Pilpel referred the Commission to section 67.20(b), which defines “public information.” He stated that the department could have responded, even if Mr. Clark had not made a records request.

Paula Datesh stated that Mr. Lazar is trying to justify his actions. She stated that he has stated that money has been squandered on Sunshine complaints.

Mr. Clark stated that if an employee knows the answer or can get it within 15 minutes, then that employee is required to provide it. He stated that Mr. Lazar has known the answer for over a year and has deliberately refused to give them the information.

Chairperson Hur closed public comment.

Mr. Lazar stated that he attended the July Task Force meeting with a representative. He stated that he had an asthmatic attack and the letter he wrote to the Task Force about it is on file. He stated that he did not attend the next Task Force meeting as he did not trust his nerves and did not want to suffer another attack.

Commissioner Liu stated that there is an obligation for a request for public information. Chairperson Hur asked whether a phone call would be a sufficient response. DCA Givner stated that the person asked or someone else in the department could be available to answer the question. He also stated section 67.21(b) addresses situations where the custodian receives a request for a copy of a public record.

Chairperson Hur asked Mr. Lazar why there was no communication from the department. Mr. Lazar stated that he did not know why and that he was not going to deny it.

Commissioner Liu stated that she was troubled by the Task Force’s finding that the willful finding was based on a pattern of practice as there is no evidence of it presented to the Commission. Chairperson Hur agreed. The Commissioners agreed that Mr. Lazar had overcome his burden regarding sections 67.21(b) and 67.21(e), but not section 67.22(b). Chairperson Hur stated that sections 67.21(b) and 67.21(e) were not applicable.

Motion 13-02-25-6 (Studley/Liu): Moved, seconded, and passed (4-0; Hayon excused) that the Ethics Commission found a violation of section 67.22(b) and that, under the Regulations, the Commission makes a finding of no violation with respect to sections 67.21(b), 67.21(e) and 67.34.

David Pilpel asked whether the Commission would issue an Order under Chapter Two, section I.I.E of the Regulations.

Motion 13-02-25-7 (Renne/Studley): Moved, seconded, and passed (4-0; Hayon excused) that the Commission directing staff to issue a letter to the Arts Commission to notify the agency of the violation and instruct the agency to cease and desist from such conduct in the future.

Public Comment:

David Pilpel suggested that the letter from staff be as specific as possible, as this process is new.

V. Discussion and possible action on election of Chair and Vice-Chair.

This agenda item was deferred to a future meeting.

VI. Discussion and possible action on the minutes of the Commission's regular meeting of January 28, 2013.

Public Comment:

David Pilpel suggested the following changes: DCA Josh White's presence during the January 2013 meeting should have been recorded; on pages 2 and 3, Commissioner Renne's vote should have been noted on the motion regarding his recusal; Commissioner Renne's vote should have been recorded as recused, not abstained for motions 3 and 4 during Agenda Item IV; and the names and titles of those present during closed session should have been noted in accordance with section 67.16 of the Sunshine Ordinance.

Motion 13-02-25-8 (Liu/Renne): Moved, seconded, and passed (4-0; Hayon excused) that the Commission approve the minutes from the Commission's regular meeting of January 28, 2013, as amended.

VII. Discussion of Executive Director's Report.

Public Comment:

David Pilpel asked whether there were any other pending Sunshine matters. Executive Director St. Croix stated that there are two more pending cases.

VIII. Items for future meetings.

Public Comment:

David Pilpel suggested a future discussion regarding how the Sunshine matters went tonight, including procedural matters. He also asked to know about any possible regulations regarding the new electronic filing requirements.

Commissioner Studley asked whether any of the Commissioners would be able to attend the Interested Persons' meeting scheduled for Wednesday, February 27, 2013. Commissioner Renne stated he would attend. Commissioner Studley also stated that she had spoken with someone who told her that it was her first time attending an Ethics Commission meeting. She stated that it would be nice if there are other citizens to attend meetings and broaden the pool of interested persons who attend Commission meetings.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the ethics commission.

None.

X. Adjournment.

Public Comment:

None.

Motion 13-02-25-8 (Studley/Liu): Moved, seconded, and passed (4-0; Hayon excused) that the Commission adjourn.

Meeting adjourned at 11:04 PM.

DRAFT





Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

SAN FRANCISCO ETHICS COMMISSION NOTICE OF SPECIAL MEETINGS AND MEETING CANCELLATIONS

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Due to scheduling issues, the regular meeting of the Ethics Commission scheduled for Monday, March 25 will be cancelled and replaced by a special meeting on Monday, April 1 at 9 am in Room 400 of City Hall.

Also, the regular monthly meeting scheduled for Monday, May 27 falls on the Memorial Day holiday and therefore will also be cancelled. It will be replaced by a special meeting on Thursday, May 30 at 5:30 pm in Room 416 of City Hall.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

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Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

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**San Francisco
Ethics Commission**



25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

Date: March 27, 2013

Re: Notice of Consideration of Proposed Regulations at the April 22, 2013
Regular Meeting of the Ethics Commission

At its regular meeting on Monday, April 22, 2013, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft regulations to Campaign and Governmental Conduct Code Section 1.112.

The proposed regulations are available for review at the Commission office and on its website.

Proposed Regulation 1.112-2: Electronic Campaign Disclosure - Signature Verification.

a) Signature Verification Cards

- 1) In order to submit an electronically-signed campaign finance disclosure statement, the person signing the disclosure statement must have filed a Form SFEC-112a with the Ethics Commission to verify his or her signature.
- 2) The Form SFEC-112a must be signed in the presence of staff of the Ethics Commission during the Commission's regular business hours, or delivered to the Commission with an original signature notarized by a notary public.
- 3) Any individual who signs Form SFEC-112a in the presence of Ethics Commission staff must present valid photo identification issued by a governmental agency, such as a San Francisco City ID, a California ID or driver's license, or a passport.
- 4) The Ethics Commission shall issue a Signer ID and PIN Code to any person who presents a validly completed Form SFEC-112a.
- 5) The person who receives the PIN Code is responsible for all documents signed using the PIN Code.

Example: A candidate receives a Signer ID and PIN Code from the Ethics Commission. The candidate discloses the PIN Code to the treasurer who uses it to sign and file the candidate committee's campaign disclosure forms. The candidate is still responsible for the contents of the campaign disclosure form that is filed with the Ethics Commission.

b) Voluntary Electronic Filing

Any person who voluntarily opts to file electronic statements under Section 1.112(c) must first file Form SFEC-112b with the Ethics Commission. Thereafter, the person shall be subject to all requirements set forth in Section 1.112 and the regulations thereunder.

c) Any campaign finance disclosure statement that must be filed electronically and that lacks all electronic signatures of the required signers is not deemed filed and may subject the responsible parties to late filing fees, in addition to any other penalty under the Code.



San Francisco Ethics Commission Interested Persons List for 03/28/2013

San Francisco Ethics Commission [ethics.commission=sfgov.org@mail184.wdc02.mcdlv.net]
on behalf of San Francisco Ethics Commission [ethics.commission@sfgov.org]

Thursday, March 28, 2013 5:01 PM

SF Docs

Agenda - April 1, 2013

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Interested Persons List

Contents:

- [Agenda - April 1, 2013](#)

Agenda - April 1, 2013

Mar 28, 2013 09:18 am

BENEDICT Y. HUR
CHAIRPERSON

JAMIEENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

PAUL A. RENNE
COMMISSIONER

SAN FRANCISCO ETHICS COMMISSION NOTICE OF SPECIAL MEETING

**April 1, 2013 9:00 A.M.
and AGENDA**

**Room 400 City Hall
1 Dr. Carlton B. Goodlett
Place, San Francisco**

NOTE: THIS IS NOT THE

JOHN ST. CROIX
EXECUTIVE DIRECTOR

DATE AND TIME OF THE COMMISSION'S REGULAR MEETING.

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Discussion and possible action on the selection of random audits of 2012 committees. Staff estimates that it will have time and resources to conduct seven random audits of non-publicly financed candidate, ballot measure and general purpose committees that were active in the 2012 election. The Commission may choose these seven committees on a random basis at this meeting. (Attachment: March 25, 2013 staff report.)
- IV. Discussion and possible action on public finance report. After each election cycle involving publicly-financed races, staff makes a report on execution of the public financing program for that election cycle. At this meeting, staff will present a report on the 2012 election cycle. (Attachment: draft 2012 public finance report.)
- V. Discussion and possible action on election of Chair and Vice-chair. The Commission will elect a Chair and Vice-chair to serve for the coming year.
- VI. Discussion and possible action on the minutes of the Commission's regular meeting of February 25, 2013. (Attachment: February 25, 2013 draft minutes.)
- VII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and

outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)

- VIII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- X. Adjournment.

There will be an opportunity for public comment on each agenda item.

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[Taken at February 25, 2013 Meeting](#)
[Press Release - February 25, 2013 - San Francisco](#)
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[on Campaign Consultant Activity](#)
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ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

Date: March 25, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Alex Koskinen, Campaign Finance Auditor

Re: Audit Selection of Year 2012 Committees

This memorandum explains the Ethics Commission's audit selection guidelines and summarizes the levels of financial activity by the different types of committees that were active during 2012. At its April 1, 2013 meeting, the Commission will randomly select committees to be audited.

Staff has determined that it will be able to audit seven recipient committees that were active in the November 6, 2012 election. The audit pool includes:

- all candidates¹ who ran for City elective office in the November 2012 election;
- ballot measure committees active in the November 2012 election; and
- general purpose recipient and primarily formed candidate committees that were active in 2012.

Table 1: Types and Financial Activity Levels of Committees Active in 2012

Level of Financial Activity ²	Ballot Measure Committees	Candidates	General Purpose Committees	No. of committees in audit pool	No. of committees to be selected
(1) \$10,000 to \$50,000	1	12	23	36	3 (8%)
(2) Above \$50,000 to \$100,000	1	4	7	12	1 (8%)
(3) Above \$100,000	7	3	13	23	3 (13%)
Total	9	19	43	71	7 (10%)

¹ Publicly financed candidates were not part of the audit pool because they are subject to a mandatory audit. The pool also excludes candidates for county central committees, general purpose committees that were selected for audit through the 2010 random selection process, and committees with financial activity of less than \$10,000.

² For candidates and ballot measure committees, the level of financial activity is based on the sum of expenditures made by these candidates and committees from the time their committees were formed through December 31, 2012. For general purpose committees, the level of financial activity is based on the expenditures made in 2012.

In 2012, the Commission administered the Board of Supervisors public financing program, which was very different from the public financing program for mayoral candidates. While Mayoral campaign committees tend to be larger and more complex, each district race for Board of Supervisors had to be monitored individually by Ethics Commission staff. This resulted in an equally large overall workload for staff, which included reviewing applications for public financing, monitoring Individual Expenditure Ceilings and answering complex questions. In addition, staff has not yet fully caught up on prior year audits due to the departure of key staff and busy election seasons in 2012 and 2011.

The mandatory audits of the 2012 publicly financed candidates will begin when staff completes the audits of the remaining 2010 publicly funded supervisorial candidates, the nine publicly financed Mayoral candidates from 2011, the seven randomly selected committees active in 2010, and the five randomly selected committees active in 2011. Because the November 2013 election may involve the administration of a public financing program for only one supervisorial district, staff anticipates that it can perform seven randomly selected audits from the 2012 election cycle in addition to the not-yet completed audits listed in the chart titled List of Audits Beginning With 2010 Audit Batch.

2012 Audit Selection Committee List

Filer ID	Committee Name	Committee Type	Total Expenditure	Level of Financial Activity
1343614	Protect Coit Tower Committee - Yes on B	BMC	\$28,870	1
961189	Jill Wynns for School Board 2012	CTL	\$12,616	1
1347527	Leon Chow for District 11 Supervisor 2012	CTL	\$12,660	1
1349920	Sandra Lee Fewer for Board of Education 2012	CTL	\$15,331	1
1343807	Bacharach for SF Community College Board 2012	CTL	\$16,433	1
1347366	Committee to Elect Shamann Walton for SF Board of Education 2012	CTL	\$18,218	1
1345528	Popek for School Board 2012	CTL	\$22,074	1
1343052	Committee to Elect Gladys Soto for San Francisco School Board - 2012	CTL	\$22,386	1
1346150	Bob Squeri for District 7 Supervisor 2012	CTL	\$31,197	1
1344536	STEVE NGO FOR COLLEGE BOARD 2012	CTL	\$31,211	1
1348585	Sam Rodriguez 4 SF School Board 2012	CTL	\$33,241	1
1347002	Re-Elect Rachel Norton for Board of Education 2012	CTL	\$39,060	1
1350267	Rafael Mandelman for San Francisco Community College District Board 2012	CTL	\$43,074	1
1340799	San Francisco Rising Action Fund Committee	RCP	\$10,109	1
1318200	National Union of Healthcare Workers Candidate Committee for Quality Patient Care and Union Democracy	RCP	\$10,549	1
1351724	FDR Democratic Club of San Francisco	RCP	\$12,968	1
991741	District 11 Democratic Club	RCP	\$13,135	1
981476	African American Democratic Club	RCP	\$13,504	1
882390	Richmond District Democratic Club	RCP	\$13,624	1
921683	Harvey Milk LGBT Democratic Club PAC	RCP	\$14,440	1
1271203	Municipal Executives Association of San Francisco PAC	RCP	\$17,122	1
1311596	ONE CALIFORNIA FOR ALL - LELAND YEE BALLOT MEASURE COMMITTEE	RCP	\$17,738	1
1237101	San Francisco Building and Construction Trades Council Political Organization of Workers for Employee Rights (POWER PAC)	RCP	\$18,874	1
1243324	UNITE HERE LOCAL 2 PAC	RCP	\$20,600	1
1311766	Coleman Action Fund for Children Committee	RCP	\$22,746	1
1346968	This Land is Your Land	RCP	\$23,119	1
1346853	Elect Women 2012, a committee to support Anderson, Cohen, DeJesus, Dunning, Elias-Jackson, Jung, Katz, Kott, Levitan, Mendoza, Migden, Mondejar, Pimentel, Rosenthal and Wolfe for San Francisco Democratic County Central Committee	RCP	\$24,034	1
970432	BUILDING OWNERS AND MANAGERS ASSOCIATION OF SAN FRANCISCO POLITICAL ACTION COMMITTEE - BALLOT ISSUES (AKA BOMA-SF-PAC-	RCP	\$25,650	1

2012 Audit Selection Committee List

Filer ID	Committee Name	Committee Type	Total Expenditure	Level of Financial Activity
	BALLOT ISSUES)			
1245538	Plan C San Francisco PAC	RCP	\$27,370	1
890287	Good Government Alliance Committee	RCP	\$28,559	1
1347298	A New San Francisco Majority in Support of the Democratic County Central Committee 2012 of JOHN AVALOS, KAT ANDERSON, DAVID CAMPOS, DAVID CHIU,... [see Attachment A for full list of candidates]	RCP	\$28,622	1
1317554	San Francisco Police Officers Association Issues PAC	RCP	\$31,768	1
1351803	Teachers, Nurses and Neighbors Supporting Christina Olague for Supervisor 2012. Sponsored by San Francisco Labor Council	RCP	\$34,946	1
1330472	SAN FRANCISCO PARENT POLITICAL ACTION COMMITTEE	RCP	\$38,990	1
1348668	FRIENDS AND NEIGHBORS IN SUPPORT OF MIKE GARCIA FOR DISTRICT 7 SUPERVISOR 2012 - A COALITION OF TAXPAYERS, RESIDENTS, AND THE SAN FRANCISCO APARTMENT ASSOCIATION	RCP	\$45,170	1
1318539	San Francisco Police Officers Association Independent Expenditure Committee	RCP	\$45,504	1
1339394	SAN FRANCISCANS FOR COMPETITIVE BIDDING supported by: San Francisco Bay Railroad, Quentin Kopp, Tony Kelly, environmentalists, small businesses and San Francisco ratepayers	BMC	\$62,014	2
1347846	Re-Elect Natalie Berg Community College Board 2012	CTL	\$66,289	2
1347701	Hanna Leung for College Board 2012	CTL	\$68,226	2
1299655	Avalos for District 11 Supervisor 2012	CTL	\$79,601	2
1346687	Matt Haney for School Board 2012	CTL	\$87,197	2
1351799	Teachers, Firefighters and Neighbors Supporting F.X. Crowley for Supervisor 2012. Sponsored by San Francisco Labor Council	RCP	\$68,801	2
842018	Alice B. Toklas Lesbian and Gay Democratic Club PAC	RCP	\$75,617	2
970630	SAN FRANCISCO LABOR & NEIGHBOR MEMBER EDUCATION/POLITICAL ISSUES COMMITTEE	RCP	\$76,902	2
932123	GOLDEN GATE RESTAURANT ASSOCIATION PAC	RCP	\$86,584	2
891575	SF FORWARD SPONSORED BY SAN FRANCISCO CHAMBER OF COMMERCE	RCP	\$93,429	2
840002	SAN FRANCISCO APARTMENT ASSOCIATION POLITICAL ACTION COMMITTEE	RCP	\$97,012	2
1338720	Progress for All	RCP	\$99,769	2
1348906	Committee to Save Our City College, Yes on A, supported by thousands of San Franciscans who support education (see attachment sheet for full committee name)	BMC	\$261,040	3
1345756	Yosemite Restoration Campaign - Yes on F, sponsored by Restore Hetch Hetchy	BMC	\$374,300	3
1349741	Coalition for Sustainable Housing, A Committee in	BMC	\$376,999	3

2012 Audit Selection Committee List

Filer ID	Committee Name	Committee Type	Total Expenditure	Level of Financial Activity
	Support of Proposition C			
1347286	SAVE HETCH HETCHY, NO ON F, A COALITION OF BUSINESS, LABOR AND TAXPAYERS, WITH MAJOR FUNDING BY THE SAN FRANCISCO FOUNDATION, DIGNITY HEALTH, AND THE BAY AREA COUNCIL	BMC	\$710,200	3
1348191	YES ON B, SAN FRANCISCANS FOR CLEAN AND SAFE NEIGHBORHOOD PARKS, WITH MAJOR SUPPORT FROM SAN FRANCISCO PARKS ALLIANCE, RON CONWAY AND THE TRUST FOR PUBLIC LAND	BMC	\$1,005,644	3
1349080	SAN FRANCISCANS FOR FAIR TAXES AND BETTER CITY SERVICES, YES ON E, A BROAD COALITION OF SMALL BUSINESSES, LABOR UNIONS, AND TECHNOLOGY COMPANIES	BMC	\$1,388,758	3
1344802	Keep San Francisco Green; No on Prop A, A Coalition of Recology, Labor, Business and Environmentalists, Major Funding by Recology.	BMC	\$1,726,486	3
1343996	Committee to Reelect David Campos for Supervisor - 2012	CTL	\$146,569	3
1343864	Rodrigo Santos for San Francisco Community College Board 2012	CTL	\$209,637	3
1346677	Re-Elect Supervisor David Chiu 2012	CTL	\$230,728	3
990028	Protect Our Benefits	RCP	\$109,701	3
1351281	Teachers, Nurses and Neighbors supporting Eric Mar for Supervisor 2012. Sponsored by San Francisco Labor Council	RCP	\$116,934	3
991525	SAN FRANCISCO LABOR COUNCIL LABOR & NEIGHBOR INDEPENDENT EXPENDITURE POLITICAL ACTION COMMITTEE	RCP	\$123,988	3
870449	BUILDING OWNERS AND MANAGERS ASSOCIATION OF SAN FRANCISCO POLITICAL ACTION COMMITTEE - INDEPENDENT EXPENDITURES AKA BOMA-SF-PAC-IE	RCP	\$137,034	3
1353184	SAN FRANCISCO WOMEN FOR ACCOUNTABILITY AND A RESPONSIBLE SUPERVISOR OPPOSING CHRISTINA OLAGUE 2012	RCP	\$148,805	3
1306339	Coalition for a Safer California	RCP	\$157,024	3
982683	Committee on Jobs Government Reform Fund	RCP	\$183,267	3
742051	San Francisco Democratic County Central Committee	RCP	\$208,217	3
1347217	MAYOR ED LEE FOR SAN FRANCISCO COMMITTEE	RCP	\$352,462	3
1331757	COALITION FOR SENSIBLE GOVERNMENT WITH MAJOR FUNDING BY SAN FRANCISCO ASSOCIATION OF REALTORS	RCP	\$376,506	3
1341796	SAN FRANCISCO ALLIANCE FOR JOBS AND SUSTAINABLE GROWTH PAC	RCP	\$744,723	3
1296947	Service Employees International Union Local 1021 Issues PAC	RCP	\$1,046,267	3
991800	SEIU United Healthcare Workers West Political Issues Committee	RCP	\$1,293,749	3

2012 Audit Selection Committee List

Legend for "Committee Type":

BMC	Primarily Formed Ballot Measure Committee
CTL	Candidate-Controlled Committee
RCP	General Purpose Recipient Committee (This category includes Primarily Formed Candidate Committees.)

Legend for "Level of Financial Activity":

1	\$10,000 to \$50,000
2	Above \$50,000 to \$100,000
3	Above \$100,000

List of Audits Beginning with 2010 Audit Batch

Committee Name	FPPC ID Number	Year	Publicly Financed (PF) or Randomly Selected (RS)	Status
Kat Anderson for District 2 Supervisor 2010	1323801	2010	PF	Complete
Committee to Elect Abraham Simmons District 2 Supervisor 2010	1323271	2010	PF	Complete
James Keys for District 6 Supervisor 2010	1319796	2010	PF	Pending
Jane Kim for Supervisor 2010	1324277	2010	PF	Pending
Jim Meko for District 6 Supervisor 2010	1318471	2010	PF	Complete
Theresa Sparks for District 6 Supervisor 2010	1326508	2010	PF	Pending
Debra Walker for Supervisor - 2010	1318110	2010	PF	Complete
Elaine Zamora for Supervisor 2010	1323197	2010	PF	Complete
Committee to Elect Bill Hemenger Supervisor District 8 - 2010	1325814	2010	PF	Complete
Rafael Mandelman for Supervisor 2010	1318949	2010	PF	Pending
Rebecca Prozan for Supervisor 2010	1322356	2010	PF	Complete
Scott Wiener for Supervisor 2010	1319353	2010	PF	Complete
Malia Cohen for Supervisor	1321410	2010	PF	Complete
Teresa Duque for Supervisor	1327981	2010	PF	Complete
Kristine Enea for Supervisor District 10 2010	1321986	2010	PF	Complete
Chris Jackson for Supervisor 2010	1327936	2010	PF	Complete
Tony Kelly for Supervisor 2010	1324851	2010	PF	Complete
DeWitt Lacy for Supervisor 2010	1320405	2010	PF	Pending
Steven Moss for District 10 Supervisor 2010	1321439	2010	PF	Complete
Eric Smith for Supervisor 2010	1321115	2010	PF	Complete
Sweet for Supervisor 2010	1324331	2010	PF	Pending
Marlene Tran, Supervisor 2010	1327510	2010	PF	Complete
Standing up to Save San Francisco – No on Measures B and K / Yes on Measures J and N, a coalition of Teachers, Nurses, Public School Parents and Labor Organizations	1329703	2010	RS	Pending
Phil Ting for Assessor 2010	1316861	2010	RS	Pending
SF Forward Sponsored by San Francisco Chamber of Commerce	891575	2010	RS	
San Francisco Labor & Neighbor Member Education / Political Issues Committee, sponsored by the San Francisco Labor Council	970630	2010	RS	
Noe Valley Democratic Club	963103	2010	RS	
Protect Our Benefits	990028	2010	RS	Complete
Laura Spanjian for Supervisor 2010	1321119	2010	RS	
Michela Alioto-Pier for Mayor 2011	1336522	2011	PF	
Avalos for Mayor 2011	1338378	2011	PF	
David Chiu for Mayor 2011	1337108	2011	PF	
Bevan Dufty for Mayor 2011	1321548	2011	PF	
Tony Hall for Mayor 2011	1334524	2011	PF	
Dennis Herrera for Mayor 2011	1331135	2011	PF	

List of Audits Beginning with 2010 Audit Batch

Join Joanna Rees for Mayor 2011	1330933	2011	PF	
Phil Ting for Mayor 2011	1316861	2011	PF	
Leland Yee for Mayor 2011	1333826	2011	PF	
Terry Baum for Mayor 2011	1338669	2011	RS	
San Francisco Labor Council Labor & Neighbor PAC	941562	2011	RS	Pending
Miyamoto for Sheriff 2011	1338641	2011	RS	
Ed Lee for Mayor 2011	1340520	2011	RS	
Adachi for Mayor 2011	1340832	2011	RS	
David Lee for San Francisco District 1 Supervisor 2012	1347203	2012	PF	
Re-Elect Supervisor Eric Mar 2012	1346364	2012	PF	
Joe Butler for D3 Supervisor 2012	1350508	2012	PF	
Friends of Thea Selby for D5 Supervisor 2012	1342843	2012	PF	
Julian Davis for Supervisor 2012	1347852	2012	PF	
John Rizzo for District 5 Supervisor 2012	1343034	2012	PF	
London Breed for San Francisco Supervisor 2012	1345505	2012	PF	
Christina Olague for Supervisor 2012	1345087	2012	PF	
FX Crowley for Supervisor 2012	1344113	2012	PF	
Engardio for District 7 Supervisor 2012	1341381	2012	PF	
Mike Garcia for District 7 Supervisor 2012	1344444	2012	PF	
Norman Yee for 2012 Supervisor District 7	1342055	2012	PF	

**San Francisco
Ethics Commission**



25 Van Ness Avenue, Suite 220
San Francisco CA 94102
Phone 252-3100 Fax 252-3112

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Report on

San Francisco's Limited

Public Financing Program

November 6, 2012 Board of Supervisors Election

San Francisco Ethics Commission

Benedict Y. Hur, Chairperson
Jamiene S. Studley, Vice-Chairperson
Beverly Hayon, Commissioner
Dorothy S. Liu, Commissioner
Paul A. Renne, Commissioner
John St. Croix, Executive Director

Prepared by: Shaista Shaikh

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Report of the Board of Supervisors Public Financing Program of 2012

This report is intended to satisfy the requirements set forth in Section 1.156 of the San Francisco Campaign and Governmental Conduct Code, which requires the Ethics Commission to produce a report following the November 2012 election stating:

- The amount of public funds disbursed to campaigns in the election;
- The number of candidates who received public funds;
- The number of nonparticipating candidates;
- The amount of qualified campaign expenditures made by all candidates in that election;
- The amount of independent expenditures made in connection with the election; and
- Other relevant information deemed useful by the Ethics Commission.

The data presented is based on information reported in campaign disclosure statements covering through December 31, 2012 and from the Commission's record of public funds disbursements.

I. Introduction

San Francisco's public financing program for candidates for the Board of Supervisors was adopted through a ballot measure (Proposition O) in November 2000. In 2006, the program was extended to include Mayoral candidates as well. The San Francisco Ethics Commission ("Commission") administered the public financing program in elections for candidates for the Board of Supervisors beginning in 2002. Because no candidate for Mayor qualified for public funding in 2007, the Commission administered the public financing program in a Mayoral election for the first time in 2011.

With respect to the qualification thresholds, disbursement formula/amounts and expenditure ceilings, the program as it was administered in the 2012 election was significantly different from the program that was administered in prior years.¹ The public financing program provides candidates running for the Board of Supervisors or Mayor with partial public funding to fund their campaigns. The Commission developed the program with the intent that it would provide candidates a neutral source of additional funding, encourage more candidates to run for office, allow candidates to spend more time discussing the issues and spend less time fundraising, and encourage candidates to limit their spending.

¹ See Appendix for a complete overview of the requirements of the public financing program as it was implemented in 2012.

II. Supervisory Candidates on the November 6, 2012 Ballot and the Amount of Public Funds Disbursed in the November 6, 2012 Election

A. Candidates Who Sought Office, Whether They Participated in the Public Financing Program and Whether They Were Elected to Office

There are eleven supervisory districts in San Francisco. In 2012, supervisory elections were held in the six odd-numbered districts in San Francisco: Districts 1, 3, 5, 7, 9 and 11. A total of 26 candidates in six districts appeared on the November 2012 ballot and 12 of these candidates qualified to receive public funds.

The 12 participants of the public financing program ran for office from four districts: Districts 1, 3, 5, and 7. The races in Districts 9 and 11 did not involve a participating candidate; only the incumbent ran for office in those races. Of the six members of the Board of Supervisors who were elected to office in the November 6, 2012 election, three, or 50 percent of those elected, were participating candidates.

Table 1 below lists candidates for the Board of Supervisors whose names appeared on the November 6, 2012 ballot, whether they participated in the public financing program, and whether the candidates were elected to office.

Table 1: List of 2012 Supervisory Candidates, Whether They Participated in the Public Financing Program, and Whether They Were Elected to Office²

Candidate	District	Participation Status (P=participating candidate; NP=non-participating candidate)	Whether candidate was elected or defeated
Sherman R. D'Silva*	1	NP	Defeated
David Lee	1	P	Defeated
Eric Mar	1	P	Elected
Marc Bruno	3	NP	Defeated
Joseph F. Butler	3	P	Defeated
David Chiu	3	NP	Elected
Wilma Pang*	3	NP	Defeated
London Breed	5	P	Elected
Julian Davis	5	P	Defeated
Daniel Everett*	5	NP	Defeated
Hope Johnson*	5	NP	Defeated

² An asterisk ("**") indicates candidates who were not required to file electronic campaign statements (i.e., candidates who received less than \$5,000 in contributions). Staff believes that the electronic reports capture the information related to contributions and expenditures that is necessary to prepare this report. The cumulative amount of activity by any candidate who filed either Form 470 or 460 in paper form only should not exceed \$4,999.99, which is an amount staff believes will not skew the general information provided in this report. Accordingly, staff did not look to the content of the paper filings to prepare this report. Staff used the same process in gathering data for the reports on the 2002, 2004, 2006, 2008 and 2010 public financing programs, thus allowing for a more direct comparison among the 2002, 2004, 2006, 2008 and 2010 data.

Christina Olague	5	P	Defeated
Andrew Resignato*	5	NP	Defeated
John Rizzo	5	P	Defeated
Thea Selby	5	P	Defeated
Andrew Bley	7	NP	Defeated
F.X. Francis Xavier Crowley	7	P	Defeated
Joel Engardio	7	P	Defeated
Michael L. Garcia	7	P	Defeated
Lynn Gavin*	7	NP	Defeated
Julian Lagos*	7	NP	Defeated
Glenn Rogers*	7	NP	Defeated
Robert Squeri	7	NP	Defeated
Norman Yee	7	P	Elected
David Campos	9	NP	Elected
John Avalos	11	NP	Elected

B. The Amount of Public Funds Disbursed in 2012

A total of \$5,613,030 in the Election Campaign Fund was available for disbursement. Eligible candidates were able to receive up to a maximum amount of \$155,000 in public funds (or up to \$152,500 for an incumbent). Unlike the public financing programs of 2008, 2010, and 2011, the 2012 public financing program did not provide for a mechanism for candidates to receive additional public funding beyond the \$155,000 cap (\$152,500 for incumbents). The 22 eligible candidates received a total of \$1,228,097 in public funds, an average of \$102,341 per candidate.

Table 2 below provides a breakdown of the amount of public funds disbursed to each qualifying candidate. It also shows the amount of total funds (public plus private) that was available to all candidates, participating and non-participating.

Table 2: Amount of Public Funds Disbursed as Compared to Total Funds Available to Candidates³

Candidate	District	Amount of Public Funds Disbursed to Participating Candidates	Total Funds Available to Candidates (private funds plus public funds, if any)	Public Funds as a Percentage of Total Funds
David Lee	1	\$155,000	\$319,466	49%
Eric Mar	1	\$152,500	\$361,314	42%
District 1 Total		\$307,500	\$680,780	45%
Marc Bruno	3		\$7,170	n/a
Joseph F. Butler	3	\$34,540	\$61,519	56%
David Chiu	3		\$258,086	n/a
District 3 Total		\$34,540	\$326,775	11%
London Breed	5	\$130,866	\$280,210	47%
Julian Davis	5	\$57,590	\$104,645	55%
Christina Olague	5	\$118,510	\$251,966	47%
John Rizzo	5	\$67,934	\$121,625	56%
Thea Selby	5	\$54,794	\$122,232	45%
District 6 Total		\$429,694	\$880,678	49%
Andrew Bley	7		\$7,825	n/a
F.X. Francis Xavier Crowley	7	\$140,344	\$308,226	46%
Joel Engardio	7	\$50,353	\$102,233	49%
Michael L. Garcia	7	\$145,623	\$279,617	52%
Robert Squeri	7		\$31,197	n/a
Norman Yee	7	\$120,043	\$242,237	50%
District 7 Total		\$456,363	\$971,335	47%
David Campos	9		\$128,263	n/a
District 9 Total		\$0	\$128,263	0%
John Avalos	11		\$71,471	n/a
District 11 Total		\$0	\$71,471	0%
Total		\$1,228,097	\$3,059,302	40%

Public grants represented 40 percent of the total funds (public and private) that were available to candidates.

³ Total funds in this table include total monetary contributions, loans, in-kind contributions, public funds and candidates' personal funds used for campaign purposes.

I. Candidate Spending

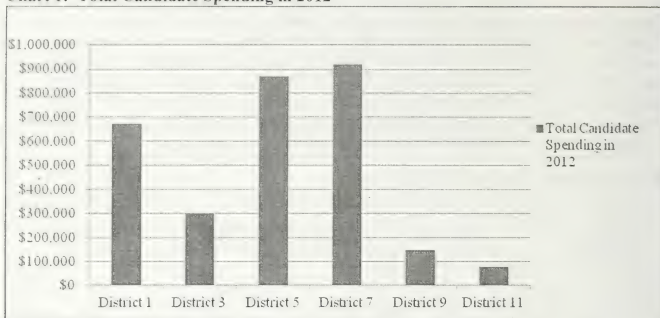
In 2012, candidate spending totaled \$2,987,290. This figure does not include spending by non-candidates. Table 3 below lists the amounts spent by candidates in 2012. The table also shows the highest level of a candidate's Individual Expenditure Ceiling, if the candidate was publicly financed. Publicly financed candidates were required to limit their expenditures to the amount of their Individual Expenditure Ceiling, which began at \$250,000 and was raised by the Ethics Commission based on the highest level of Total Supportive Funds of any opponent of a publicly financed candidate plus the Total Opposition Spending against such publicly financed candidate. Expenditure data includes both paid expenditures and debt.

Table 3: Candidate Spending in 2012

Candidate	District	Highest Level of Candidate's Individual Expenditure Ceiling	Total Expenditures Incurred
David Lee	1	\$440,000	\$315,404
Eric Mar	1	\$970,000	\$357,723
<i>District 1 Total</i>			\$673,127
Marc Bruno	3		\$6,990
Joseph F. Butler	3	\$260,000	\$61,404
David Chiu	3		\$230,728
<i>District 3 Total</i>			\$299,122
London Breed	5	\$290,000	\$279,485
Julian Davis	5	\$430,000	\$104,977
Christina Olague	5	\$530,000	\$267,446
John Rizzo	5	\$420,000	\$102,560
Thea Selby	5	\$420,000	\$115,165
<i>District 6 Total</i>			\$869,633
Andrew Bley	7		\$7,277
F.X. Francis Xavier Crowley	7	\$450,000	\$301,618
Joel Engardio	7	\$450,000	\$100,899
Michael L. Garcia	7	\$370,000	\$266,715
Robert Squeri	7		\$31,197
Norman Yee	7	\$470,000	\$211,533
<i>District 7 Total</i>			\$919,239
David Campos	9		\$146,569
<i>District 9 Total</i>			\$146,569
John Avalos	11		\$79,601
<i>District 11 Total</i>			\$79,601
<i>Total</i>			\$2,987,290

The chart below shows total candidate spending by district.

Chart 1: Total Candidate Spending in 2012



IV. Spending by Third Parties

In 2012, third parties were required to report independent expenditures, member communications, and electioneering communications on the Commission's Third Party Disclosure Form. Third party spending regarding Supervisorial candidates in the November 2012 election as disclosed on the Third Party Disclosure Form totaled \$1,507,057 (\$1,062,367 in supportive spending and \$444,690 in opposition spending).⁴

The table below summarizes the data reported on the Third Party Disclosure Form related to the candidates.

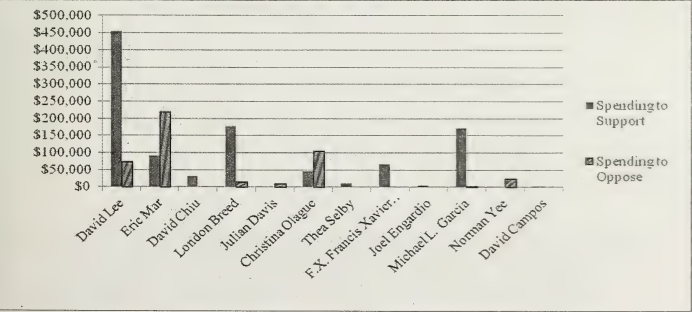
⁴ In past public financing reports, this section also included data that was reported on the FPFC Form 465. However, Form 465 data is not included here because the Form 465 requires disclosure of only independent expenditures whereas the Third Party Disclosure Form requires disclosure of independent expenditures as well as member communications and electioneering communications.

Table 4: Third Party Spending in 2012

Affected Candidate	District	SFEC Third Party Disclosure Form	
		Spending to Support	Spending to Oppose
David Lee	1	\$454,922	\$72,738
Eric Mar	1	\$91,885	\$219,040
District 1 Spending		\$546,807	\$291,778
David Chiu	3	\$31,730	
District 3 Spending		\$31,730	
London Breed	5	\$177,555	\$15,067
Julian Davis	5	\$1,266	\$8,570
Christina Olague	5	\$45,904	\$104,016
Thea Selby	5	\$10,839	
District 5 Spending		\$235,564	\$127,653
F.X. Francis Xavier Crowley	7	\$66,829	
Joel Engardio	7	\$4,920	
Michael L. Garcia	7	\$171,945	\$1,985
Norman Yee	7	\$1,985	\$23,274
District 7 Spending		\$245,679	\$25,259
David Campos	9	\$2,587	
District 9 Spending		\$2,587	\$0
Total Third Party Spending		\$1,062,367	\$444,690

The chart below displays third party spending regarding candidates in graphic form.

Chart 2: Third Party Spending in 2012



V. Public Financing at a Glance

It is difficult to identify the effects of the public financing program on the outcome of the elections. Although public financing has now been implemented in the 2002, 2004, 2006, 2008, 2010 and 2012 elections for candidates for the Board of Supervisors, there are many variables relating to these elections. In 2002, elections took place in districts where only two-year terms had elapsed. In 2004, ranked choice voting was implemented, which caused many prior constants to change; i.e., there were no more run-off elections. In 2002, 2006 and 2010 the even-numbered districts were voted on whereas seats in the odd-numbered districts were voted on in 2004, 2008 and 2012. Significant provisions of the public financing program changed over the years. The threshold for qualifying for public financing and the deadline for applying for public financing were changed after the 2002 public financing cycle. The maximum amount of public funds that participants could seek was significantly higher in 2010 and 2008 (it was \$89,000 in 2010 and \$87,500 in 2008) than the maximum amount available in prior years (the amount available in prior years was \$43,750). Furthermore, in 2012 the maximum amount was raised to \$155,000 for Non-Incumbents and \$152,500 for Incumbents and the disbursement formula was changed. In addition, the 2008 and 2010 public financing programs had a provision whereby candidates could receive greater than the initial maximum amount if the Commission determined the Per Candidate Available Disbursement Limit to be greater than the initial disbursement threshold. In 2008, 2010 and 2012, participating candidates were required to abide by an Individual Expenditure Ceiling, which did not exist in prior years. In 2008, 2010, and 2012 there were additional filing requirements on persons making third party expenditures. In conclusion, it is difficult to distinguish between the effects of these factors from the effects of the public financing program on the outcome of the elections.

Based on the data provided in reports of prior years, whenever an incumbent was involved in an election, the incumbent won regardless of whether the incumbent was a participating candidate. However, in 2012, one incumbent was not re-elected to office. Generally, in races where no incumbent is involved, a participating candidate wins. The record shows an increase in the overall amount of public funds disbursed between 2002 and 2012. The record also shows an increase in the percentage of candidates who are publicly financed. This data seems to indicate a trend towards greater acceptance of public financing of candidates in elections. The table below provides summary data of the 2012 election as well as data from prior elections.

Table 5: Summary Data from the 2012 and Past Elections

Election Year	2012	2010	2008	2006	2004	2002
Amount of Public Funds Disbursed	\$1,228,097	\$1,477,713	\$1,315,470	\$216,784	\$757,678	\$281,989
Average Amount of Public Funds Disbursed	\$102,341	\$67,169	\$69,235	\$36,131	\$32,943	\$31,332
Number of Candidates who Qualified for the Ballot	26	46	42	26	65	28
Number of Participating Candidates	12	22	19	6	23	9
Number of Seats up for Election	6	5	7	5	7	5
Number of Contested Seats	4	4	7	5	7	4
Percentage of Candidates who were Publicly Financed	46%	48%	45%	23%	35%	32%
Percentage of Elected Candidates who were Publicly Financed	50%	60%	71%	20%	43%	60%
Percentage of Incumbents Re-Elected	80%	100%	100%	100%	100%	100%
Total Amount of Candidate Spending	\$2,987,290	\$3,581,175	\$3,875,551	\$1,781,148	\$3,654,616	\$2,213,316
Amount of Third Party Spending ⁵	\$1,507,057	\$1,305,460	\$1,324,241	\$543,063	\$251,201	\$261,906

⁵ For the 2002, 2004 and 2006 elections, the amounts for third party spending were obtained from FPPC Form 465. For the 2008, 2010 and 2012 elections, the amounts listed here for third party spending were obtained from San Francisco Ethics Commission forms that require the disclosure of independent expenditures, member communications and electioneering communications (FPPC forms require disclosure of only independent expenditures).



APPENDIX: Overview of San Francisco's Limited Public Financing Program

A. Introduction

In 2012, San Francisco's limited public financing program for candidates running for Board of Supervisors provided eligible candidates up to \$155,000 (or up to \$152,500 for incumbent candidates). The total annual cost of the public financing program, including program administration, cannot exceed \$2.75 per year per resident of San Francisco.

B. Criteria and Conditions for Qualifying for Public Financing

In order to qualify for public financing, a candidate for the November 2012 election was required to:

- seek election to the office of the Board of Supervisors and be eligible to hold office if elected;
- file *Form SFEC-142(a) Statement of Participation or Non-Participation* with the Ethics Commission indicating that he/she intends to participate in the Board of Supervisors Public Financing Program;
- raise at least \$10,000 (Non-Incumbents) or \$15,000 (Incumbents) in qualifying contributions from at least 100 residents (Non-Incumbents) or 150 residents (Incumbents) of the City in contribution amounts ranging from \$10 to \$100;
- agree to limit spending on his or her campaign to no more than his/her Individual Expenditure Ceiling of \$250,000 or as raised by the Ethics Commission;
- submit a declaration (*Form SFEC-142(b)-1*), a qualifying contributions list (*Form SFEC-142(c)-1*), and supporting documentation to the Ethics Commission to establish eligibility to receive public financing;
- be opposed by a candidate who has qualified for public financing or by a candidate who has received contributions or made expenditures that in the aggregate equal or exceed \$10,000;
- bear the burden of proving that each contribution relied upon to establish eligibility is a qualifying contribution and that all contributions received comply with the Campaign Finance Reform Ordinance ("CFRO");
- bear the burden of proving that expenditures made with public funds were used only for qualified campaign expenditures;
- not make payments to a contractor or vendor in return for the contractor or vendor making a campaign contribution to the candidate; and not make more than a total of 50 payments to a contractor or vendor who has made a contribution to the candidate;
- not accept any loans to the campaign from anyone except the candidate, and not loan more than \$5,000 of the candidate's own money to his/her campaign;
- agree to participate in at least three debates with opponents;
- have paid any outstanding fines owed to the City by the candidate or any of the candidate's campaign committees;
- have filed any outstanding statements, reports or forms owed to the City by the candidate or any of the candidate's campaign committees; and

- have no finding by a court within the past five years that the candidate knowingly, willfully or intentionally violated the CFRO or the campaign finance provisions of the Political Reform Act.

Candidates were prohibited from using public funds to pay administrative, civil, or criminal fines, or to pay for inaugural activities or officeholder expenses. Under the law, all qualified candidates are subject to a mandatory audit.

C. Applying for Public Funds

In order to be certified by the Executive Director of the Ethics Commission as having met the requirements to receive public financing, candidates were required to submit, along with other items:

- 1) no later than August 10, 2012, the deadline for filing nomination papers, a *Statement of Participation or Non-Participation (Form SFEC-142(a))* indicating an intent to participate in the public financing program; and
- 2) beginning February 6 and no later than August 28, 2012, a *Declaration for Public Funds* along with a list of qualifying contributions (*Forms SFEC-142(b)-1 and SFEC-142(c)-1*) and other supporting material.

Candidates agreed to comply with all the eligibility requirements set forth above by signing and submitting the *Declaration for Public Funds*. On the accompanying list of qualifying contributions, candidates were required to include the contributor's full name, street address, occupation and employer if the contribution was \$100 or more; the total amount contributed; the amount of the contributor's qualifying contribution; the date the qualifying contribution was received; the date the qualifying contribution was deposited; and the deposit batch number. Supporting materials include photocopies of the written instruments used by the contributors to make the qualifying contributions, deposit receipts and other items such as evidence of San Francisco residency. Claims for additional public funds were required to be submitted in a similar manner.

D. Formula for Disbursing Public Funds

Candidates who were certified as eligible to participate in the public financing program received a grant of \$20,000. After the initial payment, candidates were able to seek additional public funds based on the amount of matching contributions raised and documented in timely claims submitted to the Ethics Commission.¹ After the initial payment of \$20,000, for each dollar of matching contributions up to the next \$50,000 that candidates raised, they received two dollars from the Election Campaign Fund. Thereafter, for each additional dollar of matching contributions raised, candidates received one dollar of public funds until reaching the maximum. The maximum amount

¹ A matching contribution is a contribution that is not a qualifying contribution or a loan, is made by an individual who is a resident of San Francisco (other than the candidate or the candidate's immediate family), is not received more than 18 months before the November election, and complies with all the requirements of the CFRO and its implementing regulations.

of public funds a candidate could have received was \$155,000 (Non-Incumbents) or \$152,500 (Incumbents), as shown in the table below:

	Private Funds Raised by Non-Incumbents	Matching Public Funds	Private Funds Raised by Incumbents	Matching Public Funds
Initial	\$10,000	\$20,000	\$15,000	\$20,000
1:2	\$50,000	\$100,000	\$50,000	\$100,000
1:1	\$35,000	\$35,000	\$32,500	\$32,500
Total	\$95,000	\$155,000	\$97,500	\$152,500
Total Public and Private Funds	\$250,000		\$250,000	

E. Campaign Spending Limits

To receive public funds, candidates were required to agree to limit their spending to the amount of the Individual Expenditure Ceiling, the expenditure ceiling that is established for each candidate for the Board of Supervisors who is certified by the Ethics Commission as eligible to receive public funds. Each candidate's Individual Expenditure Ceiling starts at \$250,000 and may be raised under certain circumstances. The ceiling may be raised in \$10,000 increments if the highest level of Total Supportive Funds of any opponent of a publicly financed candidate plus the Total Opposition Spending against such publicly financed candidate exceeds \$250,000 by at least \$10,000.

F. Additional Reporting Requirements for Participating and Non-Participating Candidates

All candidates for the Board of Supervisors were required to file *Form SFEC-152(a)-1* if they received contributions, or made expenditures that equaled or exceeded \$10,000. These statements serve to inform the Commission of candidates' financial activities so that the Commission could determine whether a candidate who had applied for public financing met the requirement of being opposed by a candidate who either qualified to receive public financing or received contributions or made expenditures of \$10,000 or more. If the Ethics Commission certified at least one candidate for the Board of Supervisors as eligible to receive public funds, all candidates running for office from the same district were required to file *SFEC-152(a)-2* within 24 hours of receiving contributions or making expenditures that equaled or exceeded \$100,000. Thereafter, such candidates were required to file *Form SFE-152(a)-2* within 24 hours of each time that they received additional contributions or made additional expenditures that equaled or exceeded \$10,000.

G. Additional Reporting Requirements for Third Party Spending

In a race where the Ethics Commission had certified at least one candidate as eligible to receive public funds, any person who made \$5,000 or more in independent expenditures, electioneering communications, or member communications that clearly identified any candidate for the Board of Supervisors, was required to file a statement within 24 hours

of reaching or exceeding the threshold. Other filing requirements relating to third party spending regarding a candidate for City elective office, such as a candidate for the Board of Supervisors, included the reporting of independent expenditures for mass mailings that total \$1,000 or more, or payments for electioneering communications that total \$1,000 or more. These statements served to inform the Ethics Commission of Total Supportive Funds and Total Opposition Spending relating to candidates so that the Commission could determine whether the Individual Expenditure Ceiling of any candidate should be adjusted.

[DRAFT]
Minutes of the Special Meeting of
The San Francisco Ethics Commission
April 1, 2013
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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I. Call to order and roll call.

Chairperson Hur called the meeting to order at 9:03 a.m.

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Jamiene Studley, Vice-Chairperson (arrived at 9:06 a.m.); Beverly Hayon, Commissioner; Dorothy S. Liu, Commissioner; Paul A. Renne, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Assistant Deputy Executive Director; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Charles Grisham and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Memorandum from the Executive Director, re: Audit Selection of Year 2-12 Committees, dated March 25, 2013;
- Draft Report on San Francisco's Limited Public Financing Program, November 6, 2012 Board of Supervisors Election;
- Draft minutes of the Commission's regular meeting of February 25, 2013;
- Executive Director's Report for the Special Meeting of April 1, 2013.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the ethics commission.

Charles Grisham stated that he had concerns regarding the content and legibility of various Statements of Economic Interests filed by City Attorney Dennis Herrera.

III. Discussion and possible action on the selection of random audits of 2012 committees.

Executive Director St. Croix introduced the item.

Assistant Deputy Executive Director Shaikh explained the random audit selection process.

Chairperson Hur stated that staff should consider conducting less detailed audits so that a greater number of audits may be conducted, and so that they may be conducted on a more timely basis.

After discussion between the Commissioners and staff regarding how to improve the audit process, Executive Director St. Croix stated that staff will review the legal requirements of campaign committee audits to determine if the process could be improved.

Public Comment:

None.

Charles Grisham read slips of paper containing the names of committees with activity between \$10,000 and \$50,000. The slips of paper were then placed into a box for random drawing. Mr. Grisham then selected three committees for audit: San Francisco Rising Action Fund Committee, One California for All – Leland Yee Ballot Measure Committee, and Popek for School Board 2012.

Mr. Grisham read slips of paper containing the names of committees with activity above \$50,000 to \$100,000. The slips of paper were then placed into a box for random drawing. Mr. Grisham then selected one committee for audit: Re-Elect Natalie Berg Community College Board 2012.

Mr. Grisham read slips of paper containing the names of committees with activity above \$100,000. The slips of paper were then placed into a box for random drawing. Mr. Grisham then selected three committees for audit: Mayor Ed Lee San Francisco Committee, San Francisco Labor Council & Neighbor Independent Expenditure Political Action Committee, and San Franciscans for Fair Taxes and Better City Services, Yes on E, a Broad Coalition of Small Businesses, Labor Unions, and Technology Companies.

IV. Discussion and possible action on the public finance report.

Assistant Deputy Executive Director Shaikh introduced the item and outlined the number of candidates who participated in the public finance program, as well as how much money was disbursed to those candidates.

The Commissioners and Ms. Shaikh discussed the evolution of the program and the challenges of fundraising that candidates encounter.

Public Comment:

None.

Motion 13-04-01-01 (Hayon/Studley): Moved, seconded, and passed (5-0) that the Commission approve the report.

V. Discussion and possible action on the election of Chair and Vice-Chair.

Executive Director St. Croix explained the process to elect a Chair and Vice-Chair stating that a second to a nomination is not needed.

Vice-Chairperson Studley nominated Commissioner Hayon for Chair.

Public Comment:

None.

Motion 13-04-01-02 (Studley/Renne): Moved, seconded, and passed (5-0) that the Commission elect Commissioner Hayon to be Chairperson for the upcoming year.

Commissioner Hayon nominated Commissioner Renne for Vice-Chair.

Public Comment:

None.

Motion 13-04-01-03 (Hayon/no second): Moved, seconded, and passed (5-0) that the Commission elect Commissioner Renne to be Vice-Chairperson for the upcoming year.

The Commissioners all thanked Chairperson Hur for his service as Chair.

VI. Discussion and possible action on the minutes of the Regular Meeting of February 25, 2013.

Public Comment:

None.

Motion 13-04-01-04 (Renne/Hayon): Moved, seconded, and passed (5-0) that the Commission approve the minutes for the Regular Meeting of February 25, 2013.

VII. Discussion of the Executive Director's Report.

Executive Director St. Croix introduced the item and apprised the Commissioners regarding the status of the current budget discussions.

Public Comment:

None.

VIII. Items for future meetings.

Commissioner Liu stated that she is resigning from the Commission and that this meeting is her last. She thanked the other Commissioners and staff for their work.

The Commissioners all thanked Commissioner Liu for her dedication and service.

Public Comment:

None.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the ethics commission.

Public Comment:

None.

X. Adjournment.

Public Comment:

None.

Motion 13-02-25-05 (Hayon/Renne): Moved, seconded, and passed (5-0) that the Commission adjourn.

Meeting adjourned at 10:02 a.m.







Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

04-18-13P04:00 RCYD

April 22, 2013 5:30 P.M.

and AGENDA

Room 400 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- 3
- III. Discussion and possible action on a request from Jonathan Pearlman and Mayor Lee for a waiver from Campaign and Governmental Conduct Code section 3.224 (compensated advocacy ban) on behalf of Mr. Pearlman, a licensed architect who occupies Seat 3, the architectural historian seat, on the Historic Preservation Commission (HPC), so that Mr. Pearlman may represent private parties before other City officers and employees while he serves on the HPC. (Attachment: April 14, 2013 staff report, April 2, 2013 letter from Mr. Pearlman and April 8, 2013 letter from Mayor Lee.)
- IV. Discussion and possible action on proposed Ethics Commission regulations to require signers of electronic campaign finance reports to file a completed Signature Verification Form with the Commission. (Attachment: March 20, 2013 staff report and draft regulations.)
- V. Discussion and possible action on Netfile contract. On October 31, 2007, the Ethics Commission entered into a three-year contract with Netfile under which Netfile would create an online filing system and database for all campaign finance, lobbyist, campaign consultant and official financial disclosures required or permitted under City or state law to be filed in electronic form. The contract was extended for a three-year term in 2010. Staff recommends that the Commission authorize the Executive Director to extend the contract for an additional five-year term. To meet Civil Service Commission requirements, the Commission will determine whether contracting is the most effective way to provide this service. (Attachment: April 17, 2013 staff report.)
- VI. Discussion and possible action on the minutes of the Commission's special meeting of April 1, 2013. (Attachment: April 1, 2013 draft minutes.)

- VII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)
- VIII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- X. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours. Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: www.sfgov.org/ethics.

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ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Date: April 15, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director

By: Mabel Ng, Deputy Executive Director

Re: Request for Waiver from member of Historical Preservation Commission

Jonathan Pearlman, an architect recently appointed by Mayor Lee for Seat 3 on the Historic Preservation Commission ("HPC"), has requested a waiver from the compensated advocacy provisions of section 3.224 of the San Francisco Campaign and Governmental Conduct Code ("C&GC Code"). Section 3.224 prohibits a City officer from receiving any compensation to communicate on behalf of any other person with any other City officer or employee with the intent to influence a governmental decision.

Under section 3.224(c), the Ethics Commission may waive the ban for any member of a City board or commission who, by law, must be appointed to represent any profession, trade, business, union or association. In determining whether or not to grant a waiver, the Commission may consider the ability of the City to recruit qualified individuals to fill the position if the waiver is not granted, the ability of the member to engage in his or her particular vocation if the waiver is not granted, and any other factors the Commission deems relevant. Ethics Com. Reg. 3.224-2(b).

Since 2004, the Commission has considered and granted seven requests for waivers from the compensated advocacy ban.¹ The information presented by Mr. Pearlman and the Mayor do not vary much from the information provided in the previous requests. For the reasons discussed below and set forth in the accompanying letters from Mr. Pearlman and the Mayor's Office, staff recommends that the Commission approve Mr. Pearlman's waiver request.

Analysis

1. May the Commission consider a waiver for the historical architect seat on the Historic Preservation Commission occupied by Mr. Pearlman?

¹ In one request from then-Building Inspection Commission President Ephraim G. Hirsch, the Commission granted the waiver provided that Mr. Hirsch work with the department head in his dealings with the Department of Building Inspection. The other waivers contained no conditions.

C&GC Code section 3.224(c) states that the Commission may waive the compensated advocacy ban for any member of a City board or commission who, by law, must be appointed to represent any profession, trade, business, union or association. Under Charter section 4.135, which sets forth requirements for members on the Historic Preservation Commission (HPC), Seat 3 must be "an architectural historian meeting the Secretary of the Interior's Professional Qualifications Standards for architectural history with specialized training and/or demonstrable experience in North American or Bay Area architectural history." Mr. Pearlman is a licensed architect who meets the requirements for Seat 3. Thus, he is a commission member who by law represents a profession, trade, business, union or association. Accordingly, he is eligible to request, and the Commission may determine whether to grant, a waiver from the compensation advocacy ban under C&GC Code section 3.224(c).

2. Is a waiver necessary to enable the City to recruit qualified individuals to fill the architectural historian seat on the HPC?

Mr. Pearlman was nominated by Mayor Lee for Seat 3 on the HPC on February 26, 2013; he was unanimously approved for the position by the Board of Supervisors on March 12, 2013. According to Mayor Lee's letter, his office conducted a robust outreach for Seat 3, and eventually found a small number of people who possessed the qualifications, willingness, and time commitment to serve on the HPC. Of these applicants, Mr. Pearlman "was far and away the best candidate of the group." Based on this information, it appears that a waiver may be necessary to enable the City to recruit qualified individuals to fill Seat 3 on the HPC.

3. Is a waiver necessary to enable Mr. Pearlman to pursue his vocation?

The ban in section 3.224 is personal to the City officer. The ban does not apply to "an associate, partner or employee of an officer of the City and County, unless it is clear from the totality of the circumstances that the associate, partner or employee is merely acting as an agent of the City and County officer." C&GC Code § 3.224(b). Mr. Pearlman is a small business owner in San Francisco who co-founded Elevation Architects in 1995 and serves as design principal in his firm, which employs one full-time registered architect and a part-time administrative assistant. The firm's co-founder serves as managing principal, handling the finances of the business and the interior design aspects of the firm's projects. Elevation Architects works on large and small projects in the City, including ongoing renovations of some of the City's historic and institutional buildings. Its projects have gone before City commissions for review, comment and action. As Mr. Pearlman explains, he has been working on the renovation of the Alexandria Theater on Geary Boulevard since 2010. The project was reviewed by the HPC in 2011, but now requires a hearing at the Planning Commission to be scheduled in the near future. Since Mr. Pearlman is lead on the project and there are no other representatives who know and understand the complex project, he will need to represent his client at the hearing.

Mr. Pearlman states that in addition to appearances at the Planning Commission, his firm will need to continue to submit work for approvals of both the Planning Department and the Department of Building Inspection. For much of the current and future work, Mr. Pearlman can have either an employee or project counsel present the projects; and he will recuse himself from any project presented before the HPC. However, while it is possible that Mr. Pearlman could

send someone else to appear before City officials and commissions, they will likely be nowhere near as qualified or as familiar with the projects since he operates such a small firm. Given that that's the case, a waiver should be granted so that Mr. Pearlman can continue his professional work in an effective manner.

Conclusion

For the reasons set forth in the letters and above, staff recommends that the Commission grant the waiver request.

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From: "Wheaton, Nicole" <nicole.wheaton@sfgov.org>
To: "St.Croix, John" <john.st.croix@sfgov.org>
Cc: "Ng, Mabel" <mabel.ng@sfgov.org>

Date: Monday, April 08, 2013 04:49PM
Subject: Waiver Request

John and Mabel,

Please find two letters – one from the Mayor, and the other from Commissioner Pearlman, requesting that the Ethics Commission waive SFCGC Code, Section 3.224.

Please contact me with any questions you may have, and thank you again for your assistance with this matter.

Nicole

Nicole A. Wheaton
Director of Appointments
Commission & Board Liaison
Office of Mayor Edwin M. Lee
(415) 554-7940

Attachments:

Ethics Commission Waiver Letter -
040813.pdf

Ethics Commission Waiver Letter -
040213.pdf



April 2, 2013

San Francisco Ethics Commission
25 Van Ness Avenue, #220
San Francisco, CA 94102

Re: San Francisco Municipal Code, Section 3.224 - Prohibition on Representing Private Parties
Before Other City Officers and Employees – Compensated Advocacy

Dear Commissioners,

I have been recently appointed to the Historic Preservation Commission. For this commission, there are specific requirements for knowledge and experience in the history of architecture. As an architect based in San Francisco, I have been in private practice since 1995. My firm's work includes the design and preparation of construction documents for residential and commercial projects some of which require approvals at both the Planning and Historic Preservation Commissions. For most of my current and future work, I can have either an employee or project counsel present these projects to these governmental bodies. Of course, for any project that is presented to the Historic Preservation Commission, I will recuse myself from the proceedings.

I have been working on the renovation of the Alexandria Theater on Geary Boulevard since 2010. The project was reviewed by the HPC in 2011, but now requires a hearing at the Planning Commission to be scheduled in late April or May 2013. Since I am the lead on the project and there are no other representatives who know and understand this complex project, I will need to represent my client for this hearing.

In addition to appearances at the Planning Commission, I need to continue to submit my work for approvals of both the Planning Department and Department of Building Inspection. Therefore, I am requesting a waiver to the Compensated Advocacy prohibition in the Municipal Code (Ethics Commission Regulation 3.224.2) to be able to serve the City of San Francisco in my capacity as the architectural historian on the Historic Preservation Commission as well as to continue to maintain my livelihood. As a small business owner, I would have to forego my public service if a waiver cannot be granted. I hope this will not be the case.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jonathan Pearlman", written over a light-colored background.

Jonathan Pearlman

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

April 8, 2013

San Francisco Ethics Commission
25 Van Ness Avenue, #220
San Francisco, CA 94102

Re: San Francisco Campaign and Governmental Conduct Code, Section 3.224 – Prohibition
on Representing Private Parties Before Other City Officers and Employees –
Compensated Advocacy

Dear Commissioners,

On February 26, 2013, I nominated Jonathan Pearlman to serve as a member of the Historic
Preservation Commission.

The Historic Preservation Commission was created in 2008 with the passage of Proposition J. It
is made up of seven members, six of whom must meet very specific professional qualifications
related to architecture and historic preservation in order to be appointed. *See* S.F. Charter
Section 4.135.

I nominated Mr. Pearlman for Seat 3, a seat that requires that the appointee meet the Secretary of
Interior's Professional Qualification Standards for an Architectural Historian. Specifically, these
requirements are the following:

*The minimum professional qualifications in architectural history are a graduate degree in
architectural history, art history, historic preservation, or closely related field, with coursework
in American architectural history, or a bachelor's degree in architectural history, art history,
historic preservation or closely related field plus one of the following:*

- 1. At least two years of full-time experience in research, writing, or teaching in American
architectural history or restoration architecture with an academic institution, historical
organization or agency, museum, or other professional institution; or*
- 2. Substantial contribution through research and publication to the body of scholarly
knowledge in the field of American architectural history.*

On March 12, 2013, the Board of Supervisors unanimously voted in support of Mr. Pearlman's
nomination, confirming his appointment to the Historic Preservation Commission.

Background on Jonathan's firm:

Elevation Architects was created in 1995 by Jonathan and his domestic partner Alan. Both
Jonathan and Alan own the corporation – Jonathan serves as the Design Principal and Alan

serves as the Managing Principal, handling the finances for the business as well as managing the interior design aspects of the firm's projects. Alan and Jonathan employ one full-time registered architect, Kip Coleman, and one part-time administrative assistant, Robin Kwartz.

Elevation Architects works on projects large and small throughout San Francisco, boasting a large list of successful and on-going renovations of some of our City's prized historic commercial and institutional buildings - Self Help for the Elderly's Adult Day Health Center (Chinatown's Nam Yuen Building), the Hibernia Bank, and the Alexandria Theater - as well as renovations and additions to residential buildings that are historic resources.

Due to the nature of Jonathan's work, there have been times where Elevation Architects' projects have gone before commissions for review, comment, and rarely, action. For example, over the past five years, Elevation Architects has had the following projects before a City board or commission:

Projects before Commissions for Review/Action/Information over the last five years:

- January 19, 2011: HPC for 5400 Geary Boulevard (Alexandria Theater): Review and Comment
- August 15, 2012: HPC for 1 Jones Street (Hibernia): Review and Comment
- December 4, 2008: Joint hearing of Planning Commission and Recreation & Park Commission for 740 Washington Street (Senior Center for Self Help for the Elderly) - allowance of increase in shadow at Portsmouth Square
- December 5, 2012: Historic Preservation Commission for 1 Jones Street: Certificate of Appropriateness

Currently, Elevation Architects has the following projects tentatively scheduled to appear before the Planning Commission:

- April 25, 2013: Planning Commission for 5400 Geary Blvd: Conditional Use and approval of PUD
- Summer 2013: Planning Commission for 1001 17th/140 Pennsylvania (37 unit condo building): Conditional Use approval

Campaign and Governmental Conduct Code ("C&GC Code") Section 3.224

C&GC Code Section 3.224(a) prohibits any officer of the City and County from directly or indirectly receiving "any form of compensation to communicate orally, in writing, or in any other manner on behalf of any other person with any other officer or employee of the City and County with the intent to influence a government decision."

However, C&GC Code Section 3.224(c) allows the Ethics Commissions to waive this prohibition for any officer who, by law, must be appointed to represent any profession, trade, business, union or association.

I respectfully request that the Ethics Commission waive this prohibition for Mr. Pearlman, and I would argue that this waiver would be acceptable to and beneficial for the City for the following reasons:

Arguments in Support of the Waiver

When the Charter places such specific restrictions on a seat, as it does for Historic Preservation, there are often only a few people in the City whose background and experience make them qualified, and who have the interest and time to serve. In fact, after robust outreach, we eventually found a small number of people who possessed the qualifications and willingness to serve on such a public body, and who could make the time commitment that it entails. Mr. Pearlman was far and away the best candidate of the group.

Mr. Pearlman is an elector of the City; moreover, his firm is one of the thousands of San Francisco small businesses that focus their energies on bettering the City in which they are based. Due to Mr. Pearlman's extensive applied experience rehabilitating commercial and residential buildings in San Francisco, he possesses a deep understanding of preservation impacts on our communities, both positive and negative. It is my strong belief that his understanding of these impacts, as well as his breadth of perspective related to preservation, will add immensely to the Commission's dialogue as it continues to advise the City on historic preservation matters.

I was also drawn to Mr. Pearlman's proven desire to bring architectural history to San Franciscans in a way that elevates the discourse around preservation and helps the public understand preservation's context. He has exemplified this desire in his service as the program coordinator of a volunteer driven organization in Los Altos that was created to save, move, and rehabilitate a Richard Neutra house built in 1939. In order to raise funds for this endeavor, the organization created numerous educational programs about 20th century American and California architecture, landscape and design through speaker and film series. The creation of their first "design camp," – a camp that will introduce 8th and 9th graders to the discipline of historic preservation – is an idea from which so many of San Francisco's youth could benefit, and a perfect example of new and diverse ways to educate our populace.

Mr. Pearlman has a clear ability to be a bridge to the public, helping to translate the formal way of defining architectural history to one that is applied, in an effort to help turn the fear that many San Franciscans have of owning a historic resource into a sense of pride. It should be our City's goal to address San Francisco history in a way that neither diminishes that history nor denies the need of citizens today and in the future. I know Jonathan shares that sentiment, and I am confident that with his participation, citizens will increasingly appreciate the retention and preservation of some of our most historic gems, while our City continues to grow and prosper.

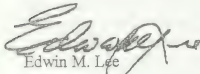
Our City's laws were not established with the intent of denying small business owners the ability to participate in a meaningful way on issues that affect them and of which they are intimately familiar. Small business owners are immensely qualified and are also very deserving of an official role in our public discourse. Mr. Pearlman should not be disqualified from serving simply because of his ownership of a small firm. If the waiver is denied, Mr. Pearlman would be required to choose between service on the Commission or foregoing his livelihood. If he chooses the former, the City will have lost the services of someone who has astute knowledge of our City's history and a profound appreciation of the significance of preservation efforts upon our diverse populations.

Mr. Pearlman's background, his understanding for and appreciation of the diverse communities that make up the citizenry of San Francisco, his civic engagement; and his work on numerous sites throughout the City, both high profile and commonplace, will enhance and benefit the

makeup of the Historic Preservation Commission and will greatly benefit our City. It is for these reasons that I respectfully request that the Ethics Commission grant him this waiver.

Thank you for your consideration of this request.

Sincerely,



Edwin M. Lee
Mayor

DESEC. 4.135. HISTORIC PRESERVATION COMMISSION.

GENERAL. There is hereby created a Historic Preservation Commission, which shall advise the City on historic preservation matters, participate in processes that involve historic or cultural resources, and take such other actions concerning historic preservation as may be prescribed by ordinance. The Historic Preservation Commission shall consist of seven members nominated by the Mayor and subject to approval by a majority of the Board of Supervisors.

The term and tenure of all members sitting on the Landmarks Preservation Advisory Board, created under Article 10 of the Planning Code, as of the effective date of this section shall terminate on December 31, 2008. Of the original appointments to the Historic Preservation Commission, four shall be for a four-year term and three for a two-year term as follows; the odd-numbered seats shall be for four-year terms and the even-numbered seats shall be for two-year terms. After the expiration of the original terms, all appointments shall be for four-year terms, provided however, that a member may holdover until a successor has been nominated by the Mayor and approved by the Board of Supervisors. There shall be no limit on the number of terms a member may serve.

The original nominations shall be made no later than 31 days after the date of the election creating this section. If the Mayor fails to nominate an original appointment within said period, the nomination for the original appointment may be made by the President of the Board of Supervisors, subject to the approval of a majority of the Board of Supervisors.

Within 60 days of the expiration of a term or other vacancy the Mayor shall nominate a qualified person to fill the vacant seat for the term, or the remainder of the term, subject to approval by a majority of the Board of Supervisors who shall hold a public hearing and vote on the nomination within 60 days of the Mayor's transmittal of the nomination to the Clerk of the Board of Supervisors. If the Mayor fails to make such nomination within 60 days, the nomination may be made by the President of the Board of Supervisors, subject to the approval of a majority of the Board of Supervisors. The appointment shall become effective on the date the Board of Supervisors adopts a motion approving the nomination or after 60 days from the date the Mayor transmits the nomination to the Clerk of the Board of Supervisors if the Board of Supervisors fails to act.

Members may be removed by the appointing officer only pursuant to Section 15.105.

QUALIFICATIONS. In addition to the specific requirements set forth below, members of the Historic Preservation Commission shall be persons specially qualified by reason of interest, competence, knowledge, training and experience in the historic, architectural, aesthetic, and cultural traditions of the City, interested in the preservation of its historic structures, sites and areas, and residents of the City. Six of the members of the Historic Preservation Commission shall be specifically qualified in the following fields:

1. Seats 1 and 2: licensed architects meeting the Secretary of the Interior's Professional Qualifications Standards for historic architecture;
2. Seat 3: an architectural historian meeting the Secretary of the Interior's Professional Qualifications Standards for architectural history with specialized training and/or demonstrable experience in North American or Bay Area architectural history;

3. Seat 4: an historian meeting the Secretary of the Interior's Professional Qualifications Standards for history with specialized training and/or demonstrable experience in North American or Bay Area history;

4. Seat 5: an historic preservation professional or professional in a field such as law, land use, community planning or urban design with specialized training and/or demonstrable experience in historic preservation or historic preservation planning.

5. Seat 6 shall be specially qualified in one of the following fields or in one of the fields set forth for Seats 1, 2, or 3;

a. A professional archeologist meeting the Secretary of the Interior's Professional Qualification Standards for Archeology;

b. A real estate professional or contractor who has demonstrated a special interest, competence, experience, and knowledge in historic preservation;

c. A licensed structural engineer with at least four years of experience in seismic and structural engineering principals applied to historic structures; or

d. A person with training and professional experience with materials conservation.

Seat 7 shall be an at large seat subject to the minimum qualifications set forth above.

LANDMARK AND HISTORIC DISTRICT DESIGNATIONS. The Historic Preservation Commission shall have the authority to recommend approval, disapproval, or modification of landmark designations and historic district designations under the Planning Code to the Board of Supervisors. The Historic Preservation Commission shall send recommendations regarding landmarks designations to the Board of Supervisors without referral or recommendation of the Planning Commission. The Historic Preservation Commission shall refer recommendations regarding historic district designations to the Planning Commission, which shall have 45 days to review and comment on the proposed designation, which comments, if any, shall be forwarded to the Board of Supervisors together with the Historic Preservation Commission's recommendation. Decisions of the Historic Preservation Commission to disapprove designation of a landmark or historic district shall be final unless appealed to the Board of Supervisors.

CERTIFICATES OF APPROPRIATENESS. The Historic Preservation Commission shall approve, disapprove, or modify certificates of appropriateness for work to designated landmarks or within historic districts. For minor alterations, the Historic Preservation Commission may delegate this function to staff, whose decision may be appealed to the Historic Preservation Commission.

For projects that require multiple planning approvals, the Historic Preservation Commission must review and act on any Certificate of Appropriateness before any other planning approval action. For projects that (1) require a conditional use permit or permit review under Section 309, et seq., of the Planning Code and (2) do not concern an individually landmarked property, the Planning Commission may modify any decision on a Certificate of Appropriateness by a 2/3 vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code.

For projects that are located on vacant lots, the Planning Commission may modify any decision on a Certificate of Appropriateness by a two-thirds vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code.

The Historic Preservation Commission or Planning Commission's decision on a Certificate of Appropriateness shall be final unless appealed to the Board of Appeals, which may modify the decision by a 4/5 vote; provided, however, that if the project requires Board of Supervisors approval or is appealed to the Board of Supervisors as a conditional use, the decision shall not be appealable to the Board of Appeals, but rather to the Board of Supervisors, which may modify the decision by a majority vote.

SIGNIFICANT OR CONTRIBUTORY BUILDING AND CONSERVATION DISTRICT DESIGNATIONS IN THE C-3 DISTRICTS. The Historic Preservation Commission shall have the authority to recommend approval, disapproval, or modification of Significant or Contributory building and Conservation District designations under the Planning Code to the Board of Supervisors. The Historic Preservation Commission shall send recommendations regarding Significant or Contributory Buildings to the Board of Supervisors without referral or recommendation of the Planning Commission. The Historic Preservation Commission shall refer recommendations regarding Conservation District designations to the Planning Commission, which shall have 45 days to review and comment on the proposed designation, which comments, if any, shall be forwarded to the Board of Supervisors together with the Historic Preservation Commission's recommendation. Decisions of the Historic Preservation Commission to disapprove designation of a Significant or Contributory building or Conservation District shall be final unless appealed to the Board of Supervisors.

ALTERATION OF SIGNIFICANT OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS IN THE C-3 DISTRICTS. The Historic Preservation Commission shall have the authority to determine if a proposed alteration is a Major Alteration or a Minor Alteration. The Historic Preservation Commission shall have the authority to approve, disapprove, or modify applications for permits to alter or demolish designated Significant or Contributory buildings or buildings within Conservation Districts. For Minor Alterations, the Historic Preservation Commission may delegate this function to staff, whose decision may be appealed to the Historic Preservation Commission.

For projects that require multiple planning approvals, the Historic Preservation Commission must review and act on any permit to alter before any other planning approval action. For projects that (1) require a conditional use permit or permit review under Section 309, et seq., of the Planning Code and (2) do not concern a designated Significant (Categories I and II) or Contributory (Category III only) building, the Planning Commission may modify any decision on a permit to alter by a 2/3 vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code.

For projects that are located on vacant lots, the Planning Commission may modify any decision on a permit to alter by a two-thirds vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code.

The Historic Preservation Commission's or Planning Commission's decision on a permit to alter shall be final unless appealed to the Board of Appeals, which may modify the decision by a 4/5 vote; provided, however, that if the project requires Board of Supervisors approval or is appealed to the Board of Supervisors as a conditional use, the decision shall not be appealable to the Board of Appeals, but rather to the Board of Supervisors, which may modify the decision by a majority vote.

MILLS ACT CONTRACTS. The Historic Preservation Commission shall have the authority to recommend approval, disapproval, or modification of historical property contracts to the Board of Supervisors, without referral or recommendation of the Planning Commission.

PRESERVATION ELEMENT OF THE GENERAL PLAN. The Historic Preservation Commission shall recommend to the Planning Commission a Preservation Element of the General Plan and shall periodically recommend to the Planning Commission proposed amendments to such Preservation Element of the General Plan. Other objectives, policies, and provisions of the General Plan and special area, neighborhood, and other plans designed to carry out the General Plan, and proposed amendments thereto, that are not contained within such Preservation Element but that concern historic preservation shall be referred to the Historic Preservation Commission for its comment and recommendations prior to action by the Planning Commission. When the Planning Commission recommends to the Board of Supervisors for approval or rejection proposed amendments to the General Plan that concern historic preservation, any recommendation or comments of the Historic Preservation Commission on such proposed amendments shall be forwarded to the Board of Supervisors for its information.

REFERRAL OF CERTAIN MATTERS. The following matters shall, prior to passage by the Board of Supervisors, be submitted for written report by the Historic Preservation Commission regarding effects upon historic or cultural resources: ordinances and resolutions concerning historic preservation issues and historic resources; redevelopment project plans; waterfront land use and project plans; and such other matters as may be prescribed by ordinance. If the Planning Commission is required to take action on the matter, the Historic Preservation Commission shall submit any report to the Planning Commission as well as to the Board of Supervisors; otherwise, the Historic Preservation Commission shall submit any report to the Board of Supervisors.

OTHER DUTIES. For proposed projects that may have an impact on historic or cultural resources, the Historic Preservation Commission shall have the authority to review and comment upon environmental documents under the California Environmental Quality Act and the National Environmental Policy Act. The Historic Preservation Commission shall act as the City's local historic preservation review commission for the purposes of the Certified Local Government Program, may recommend properties for inclusion in the National Register of Historic Places, and may review and comment on federal undertakings where authorized under the National Historic Preservation Act. The Historic Preservation Commission shall review and comment upon any agreements proposed under the National Historic Preservation Act where the City is a signatory prior to any approval action on such agreement. The Historic Preservation Commission shall have the authority to oversee and direct the survey and inventory of historic properties.

Once a quorum of members of the Historic Preservation Commission has been originally appointed and approved, the Historic Preservation Commission shall assume any powers and duties assigned to the Landmarks Preservation Advisory Board until the Municipal Code has been amended to reflect the creation of the Historic Preservation Commission.

BUDGET, FEES, DEPARTMENT HEAD, AND STAFF. The provisions of Charter subsections 4.102(3), 4.102(4), 4.102(5), and 4.102(6) shall not apply to the Historic Preservation Commission. The Historic Preservation Commission may review and make recommendations on the Planning Department budget and on any rates, fees, and similar charges with respect to appropriate items coming within the Historic Preservation Commission's jurisdiction to the department head of the Planning Department or the Planning Commission. The department head of the Planning Department shall assume the powers and duties that would otherwise be executed by an Historic Preservation Commission department head. The Planning Department shall render staff assistance to the Historic Preservation Commission.

(Added by Proposition J, 11/4/2008)



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Date: March 20, 2013
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Steven Massey, Information Technology Officer
Re: Regulation re CFRO Section 1.112

Introduction

On July 13, 2012, the Governor approved Assembly Bill (AB) 2452, sponsored by the City and County of San Francisco, to allow local agencies to accept campaign finance statements in electronic format instead of paper. AB 2452 permits each locality to approve an ordinance authorizing the filing of electronic statements. Following the passage of AB 2452, the Commission and the Board of Supervisors amended Campaign and Governmental Conduct Code section 1.112 (codified in the Campaign Finance Reform Ordinance, or CFRO) to this effect. That section is reprinted at the end of this memo. With these amendments:

- A San Francisco committee is required to file electronic statements if the committee receives contributions or makes expenditures that total \$1,000 or more in a calendar year;
- any committee not required to file electronic statements may voluntarily opt to file electronic statements; and
- any committee that files electronic statements is not required to file paper versions.

Under State law, the Commission's electronic filing system must include a procedure for filers to sign statements and reports under penalty of perjury. The proposed regulations would clarify how committee officers would sign electronic documents.

The Commission may adopt, amend and rescind regulations consistent with and related to carrying out the purposes and provisions of the CFRO. The Commission may adopt regulations by a majority (3/5) vote. A regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of this 60-day period, the Board of Supervisors vetoes the regulation by a two-thirds (8/11) vote. See S.F. Charter § 15.102. Staff anticipates implementing the new electronic filing requirements starting with the July 31, 2013 semi-annual filing deadline.

Discussion and Proposed Regulation

Government Code section 81004(A) requires:

All reports and statements filed under this title shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his knowledge it is true and complete.

The Secretary of State has not authorized committees that file statements with the state to file electronically, so the state has not developed an electronic signature procedure for campaign finance statements. Only local agencies that pass an ordinance in compliance with the requirements in AB 2452 are permitted to accept electronic statements in lieu of paper reports.

Staff has discussed possible methods of complying with the signature requirement with other cities. In January, the City of San Diego was the first city to implement a version of the discussed procedure. There, filers complete a Signature Verification Card that is signed in hard copy and transmitted to the agency's electronic filing system vendor via fax. The Signature Verification Card requires the signer to agree that all documents filed electronically in the electronic filing system will be signed under penalty of perjury. Upon receipt of a Signature Verification Card, the City provides the signer with a signer ID number, used as the electronic signature, and a PIN code that the filer will use to verify the signature's authenticity. The signer may use the signer ID number on any electronic statement filed in the electronic filing system. Staff proposes adopting the Signature Verification Card procedure, but adding a further level of security to the requirement to verify the signer's identity.

To establish a committee, a candidate must file a Candidate Intention Statement (FPPC Form 501) and committee officers must file a Statement of Organization (FPPC Form 410). Currently, these forms are signed and filed in hard copy. However, staff believes it will be able to accommodate accepting these forms in electronic format in the near future. Once these forms are filed electronically, an individual would be able to establish a committee and an electronic filing account, and file all frequently filed FPPC forms electronically without ever verifying the authenticity of his or her identity.

To ensure the authenticity of the filer's signature card, and in anticipation of Forms 501 and 410 becoming electronic forms, staff proposes that instead of requiring the Signature Verification Card to be faxed to the Commission's electronic filing system vendor, the Commission require that the card be signed either in the presence of Ethics Commission staff or acknowledged by a notary public and delivered to the Commission. Filers would be required to present valid photo identification when signing the Signature Verification Card. This added step would guarantee that the signer's identity is authentic and that the signer ID and PIN code are provided to the appropriate signer. The Signature Verification Card (proposed Ethics Form SFEC-112a) would only need to be completed once to verify the signer's identity, so attorneys and professionals who frequently serve as treasurer for multiple committees and candidates who run for office in multiple elections would use the same signer ID and PIN code for all documents filed with the Commission. The Commission would store the original copies of the Signature Verification Cards in the Commission's office.

Draft Regulation 1.112-2(a) would provide that in order to submit an electronically signed campaign disclosure statement, the signer must have first filed a Form SFEC-112a with the Commission, consistent with the process described above. The Commission would issue a signer ID and PIN code to a signer who completes a valid form SFEC-112a. A signer who receives a PIN code would be responsible for all documents signed using that PIN code.

Draft Regulation 1.112-2(b) would set forth the steps for a person who voluntarily opts to file electronically. Form SFEC-112b includes a checkbox to confirm that the committee intends to file electronic statements in lieu of paper statements.

Draft Regulation 1.112-2(c) states that a campaign statement that lacks the electronic signatures of all required signers on the statement is not deemed filed.

Proposed Regulation 1.112-2: Electronic Campaign Disclosure - Signature Verification.

a) Signature Verification Cards

- 1) In order to submit an electronically-signed campaign finance disclosure statement, the person signing the disclosure statement must have filed a Form SFEC-112a with the Ethics Commission to verify his or her signature.
- 2) The Form SFEC-112a must be signed in the presence of staff of the Ethics Commission during the Commission's regular business hours, or delivered to the Commission with an original signature notarized by a notary public.
- 3) Any individual who signs Form SFEC-112a in the presence of Ethics Commission staff must present valid photo identification issued by a governmental agency, such as a San Francisco City ID, a California ID or driver's license, or a passport.
- 4) The Ethics Commission shall issue a Signer ID and PIN Code to any person who presents a validly completed Form SFEC-112a.
- 5) The person who receives the PIN Code is responsible for all documents signed using the PIN Code.

Example: A candidate receives a Signer ID and PIN Code from the Ethics Commission. The candidate discloses the PIN Code to the treasurer who uses it to sign and file the candidate committee's campaign disclosure forms. The candidate is still responsible for the contents of the campaign disclosure form that is filed with the Ethics Commission.

b) Voluntary Electronic Filing

Any person who voluntarily opts to file electronic statements under Section 1.112(c) must first file Form SFEC-112b with the Ethics Commission. Thereafter, the person shall be subject to all requirements set forth in Section 1.112 and the regulations thereunder.

c) Any campaign finance disclosure statement that must be filed electronically and that lacks all electronic signatures of the required signers is not deemed filed and may subject the responsible parties to late filing fees, in addition to any other penalty under the Code.

Decision Point

Shall the Commission approve the proposed regulation as set forth above?

Attached are a draft of form SFEC-112a, form SFEC-112b and a memorandum that will be sent to all filers to inform them of the new electronic filing requirements.

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SEC. 1.112. ELECTRONIC CAMPAIGN DISCLOSURE.

(a) FILING ELECTRONIC CAMPAIGN STATEMENTS.

(1) Filing Electronic Copies of Campaign Statements Required by State Law. Whenever any committee that meets the requirements of Subsection (b) of this Section is required by the California Political Reform Act, California Government Code Section 81000 et seq., to file a campaign disclosure statement or report with the Ethics Commission, the committee shall file the statement or report in an electronic format with the Ethics Commission, provided the Ethics Commission has prescribed the format at least 60 days before the statement or report is due to be filed.

(2) Filing Electronic Copies of Campaign Statements Required by Local Law. Whenever any committee is required to file a campaign disclosure statement or report with the Ethics Commission under this Chapter, the committee shall file the statement or report in an electronic format, provided the Ethics Commission has prescribed the format at least 60 days before the statement or report is due to be filed.

(3) Continuous Filing of Electronic Statements. Once a committee is subject to the electronic filing requirements imposed by this Section, the committee shall remain subject to the electronic filing requirements, regardless of the amount of contributions received or expenditures made during each reporting period, until the committee terminates pursuant to this Chapter and the California Political Reform Act, California Government Code Section 81000 et seq.

(4) Disclosure of Expenditure Dates. All electronic statements filed under this Section shall include the date any expenditure required to be reported on the statement was incurred, provided that the Ethics Commission's forms accommodate the reporting of such dates.

(b) COMMITTEES SUBJECT TO ELECTRONIC FILING REQUIREMENTS.

(1) A committee must file electronic copies of statements and reports if it receives contributions or makes expenditures that total \$1,000 or more in a calendar year and is:

(A) a committee controlled by a candidate for City elective office;

(B) a committee primarily formed to support or oppose a local measure or a candidate for City elective office; or

(C) a general purpose recipient, independent expenditure or major donor committee that qualifies, under state law, as a county general purpose committee in the City and County of San Francisco; or

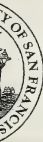
(D) a committee primarily formed to support or oppose a person seeking membership on a San Francisco county central committee, including a committee controlled by the person seeking membership on a San Francisco county central committee.

(2) The Ethics Commission may require additional committees not listed in this Section to file electronically through regulations adopted at least 60 days before the statement or report is due to be filed.

(c) VOLUNTARY ELECTRONIC FILING. Any committee not required to file electronic statements by this Section may voluntarily opt to file electronic statements by submitting written notice to the Ethics Commission. A committee that opts to file electronic statements shall be subject to the requirements of this Section.

(Added by Proposition O, 11/7/2000; amended by Ord. 008-13, File No. 120817, App. 2/4/2013; amended by Ord. 3-06, File No. 051439, App. 1/20/2006; Ord. 228-06, File No. 060501, App. 9/14/2006; Ord. 234-09; File No. 090989, App. 11/10/2009) (Former Sec. 1.112 was added by Ord. 114-76, App. 4/2/76; amended by Ord. 386-95, App. 12/14/95; renumbered by Ord. 71-00, File No. 000358, App. 4/28/2000; renumbered by Proposition O, 11/7/2000)





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

DATE

Treasurer
Committee Name [ID#]
Address
City, CA Zip

Dear Treasurer/Candidate:

Re: Changes to Electronic Filing Requirements

Please read this notice carefully because the changes discussed impact all filers of campaign finance statements with the Ethics Commission.

This letter provides notice of changes to electronic filing requirements, pursuant to section 1.112(a)(1) of the San Francisco Campaign and Governmental Conduct Code. Recent changes to the Political Reform Act, Campaign Finance Reform Ordinance, and Ethics Commission regulations require committees to adhere to the following changes:

- 1) A committee must file electronic statements and reports if it receives contributions or makes expenditures that total \$1,000 or more in a calendar year. Therefore, all San Francisco committees that file Form 410 to establish a committee and all Form 461 filers should register for an electronic filing account with the Ethics Commission. All committee officers should register for a Netfile User Account and complete a Signature Verification Card (Form SFEC-112a);
- 2) A committee primarily formed to support or oppose a person seeking membership on a San Francisco county central committee, including a committee controlled by the person seeking membership on a San Francisco county central committee, must file electronic statements if the committee reaches the \$1,000 electronic filing threshold. Therefore, such committees should complete a Committee Account Registration Form (Form SFEC-112b) to register for an electronic filing account with the Ethics Commission. All committee officers should register for a Netfile User Account and complete a Signature Verification Card (Form SFEC-112a);
- 3) Any committee not required to file electronic statements may voluntarily opt to file electronic statements by submitting written notice to the Ethics Commission. This includes any committee that is required to file an original statement with the Secretary of State and a copy of the statement with the Ethics Commission. Written notice is provided by completing a Committee Account Registration Form (Form SFEC-112b). A committee that volunteers to file electronic statements is subject to the electronic filing requirements, regardless of the amount





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

DATE

JAMIEENNE S. STUDLEY
VICE-CHAIRPERSON

Treasurer
Committee Name [ID#]

BEVERLY HAYON
COMMISSIONER

Address
City, CA Zip

DOROTHY S. LIU
COMMISSIONER

Dear Treasurer/Candidate:

PAUL A. RENNE
COMMISSIONER

Re: Changes to Electronic Filing Requirements

JOHN ST. CROCK
EXECUTIVE DIRECTOR

**Please read this notice carefully because the changes discussed impact
all filers of campaign finance statements with the Ethics Commission.**

This letter provides notice of changes to electronic filing requirements, pursuant to section 1.112(a)(1) of the San Francisco Campaign and Governmental Conduct Code. Recent changes to the Political Reform Act, Campaign Finance Reform Ordinance, and Ethics Commission regulations require committees to adhere to the following changes:

- 1) A committee must file electronic statements and reports if it receives contributions or makes expenditures that total \$1,000 or more in a calendar year. Therefore, all San Francisco committees that file Form 410 to establish a committee and all Form 461 filers should register for an electronic filing account with the Ethics Commission. All committee officers should register for a Netfile User Account and complete a Signature Verification Card (Form SFEC-112a);
- 2) A committee primarily formed to support or oppose a person seeking membership on a San Francisco county central committee, including a committee controlled by the person seeking membership on a San Francisco county central committee, must file electronic statements if the committee reaches the \$1,000 electronic filing threshold. Therefore, such committees should complete a Committee Account Registration Form (Form SFEC-112b) to register for an electronic filing account with the Ethics Commission. All committee officers should register for a Netfile User Account and complete a Signature Verification Card (Form SFEC-112a);
- 3) Any committee not required to file electronic statements may voluntarily opt to file electronic statements by submitting written notice to the Ethics Commission. This includes any committee that is required to file an original statement with the Secretary of State and a copy of the statement with the Ethics Commission. Written notice is provided by completing a Committee Account Registration Form (Form SFEC-112b). A committee that volunteers to file electronic statements is subject to the electronic filing requirements, regardless of the amount

of contributions received or expenditures made during each reporting period, until the committee terminates; and

- 4) Any committee that files electronic statements and completes the electronic signature requirements detailed below is no longer required to file paper versions of the statements that are electronically filed.

Electronic Signatures

All individuals required to sign electronic campaign finance statements are required to complete a Signature Verification Card (Form SFEC-112a) to authenticate the identity of the signer. The Signature Verification Card (Form SFEC-112a) is a paper form that is signed by the individual and stored at the Ethics Commission. Upon receipt of the Signature Verification Card (Form SFEC-112a), the Ethics Commission will provide the individual with an electronic signature ID number and PIN code that will be used to sign documents. The electronic signature ID number will serve as the individual's electronic signature for any electronic statement filed with the Ethics Commission. Individuals who do not have a Signature Verification Card (Form SFEC-112a) on file will not be able to sign electronic statements. Individuals required to sign electronic documents will need to complete the Signature Verification Card (Form SFEC-112a) only once. **Signature Verification Cards (Form SFEC-112a) must either be signed in the presence of Ethics Commission staff or acknowledged by a notary public and delivered to the Commission office. Individuals signing a Form SFEC-112a must show a government issued identification card that shows their picture and name.**

Not all individuals need to establish a Signature Verification Card (Form SFEC-112a). Only statements that require a signature must have a Signature Verification Card (Form SFEC-112a) on file. Statements requiring a signature at this time include Fair Political Practices Commission (FPPC) forms: 450, 460, 461, and 465. Additional forms that require electronic signatures may be required to be filed in electronic format in the future. In addition, for committees that do not reach the \$1,000 threshold and voluntarily e-file, a Signature Verification Card (Form SFEC-112a) is required for FPPC form 470. FPPC Forms 496 and 497 do not require a signature, thus individuals filing these statements **do not** need to complete a Signature Verification Card (Form SFEC-112a) within 24 hours of making a late contribution or independent expenditure. However, these individuals will require a Signature Verification Card (Form SFEC-112a) when the transactions are reported on FPPC Form 460 or 461.

The Ethics Commission will begin requiring Signature Verification Cards (Form SFEC-112a) for all individuals signing electronic campaign finance statements as of the semi-annual campaign finance statement due July 31, 2013. Individuals required to sign electronic statements should complete the Signature Verification Card (Form SFEC-112a) early. A committee with a completed semi-annual statement that is ready to be filed but lacking a Signature Verification Card (Form SFEC-112a) on file for one of the required signers will be unable to submit the statement, which can lead to the late filing of statements and a fine of \$25 per day for each day the statement is late. **It is each signer's responsibility to comply with the electronic signature requirements. Again, a committee that completes its disclosure statements but that also lacks the required electronic signature ID will not be able to file the disclosure statement.**

Signers must never disclose the PIN code to anyone, including other campaign staff, because the PIN code will be used to verify that the individual has signed the statement. If the PIN code is ever compromised, it is the responsibility of the signer to notify immediately the Ethics Commission and to reset the PIN code using the Netfile User Account.

Committees must complete three steps to file electronic statements with the Ethics Commission:

- 1) All signers must create a "Netfile User Account" or have an existing account from a previous committee. The "Netfile User Account" is an individual specific account that can be used to access multiple committee accounts for which the individual is responsible;
- 2) All signers must complete "Signature Verification Card (Form SFEC-112a)" or have a "Signature Verification Card (Form SFEC-112a)" already on file from a previous committee; and
- 3) An authorized committee officer must complete a "Committee Account Registration Form (Form SFEC-112b)" to establish an electronic filing account for the committee. The committee account is used to file electronic statements and may be controlled by multiple committee officers with "Netfile User Accounts."

Attached to this notice are instructions that detail the exact steps each committee must take to sign and file electronic statements with the Ethics Commission. **Because some steps require review by Ethics Commission staff, we advise you to complete these steps as soon as possible.**

If you have questions, please contact the Ethics Commission at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

CC: Candidates/Committees

Instructions

How to Register for On-line Accounts to File Using the Free Electronic Filing System or Third-Party Vendor Software

1. Create a Netfile User Account

If you have never used the electronic filing system before, or you previously used third-party vendor software to file campaign statements and did not register for a Netfile User Account, you will need to register for a Netfile User Account. The Netfile User Account will be your on-line identity that can access all committee accounts for which you are responsible. You will need a Netfile User Account if you either sign electronic statements or you enter information into the FPFC forms. If you already have a Netfile User Account, skip this step.

Complete the following steps to create a Netfile User Account:

- 1) Go to the Ethics Commission's web site at <http://www.sfethics.org> and click to register for campaign finance electronic filing under the heading "E-File Statements";
- 2) Click the link to "Create a Netfile User Account";
- 3) Complete the form and click "Create Netfile User";
- 4) A confirmation e-mail will be sent to the e-mail address that you provided on the form to verify the authenticity of the account. Open the e-mail and click the link; and
- 5) Your web browser will be taken to a page with a unique password. Print the page or write down the password and keep it in a safe place. The password can be changed later.

You have completed the process to register for a Netfile User Account. **You must still complete Signature Verification Card (Form SFEC-112a) before you can sign electronic documents.**

2. Complete a Signature Verification Card (Form SFEC-112a)

All signers should complete the following steps to complete the Signature Verification Card (Form SFEC-112a):

- 1) Go to the Ethics Commission's web site at <http://www.sfethics.org> and click to login to the campaign finance electronic filing under the heading "E-File Statements";
- 2) Enter your e-mail address and password and click "Log In";
- 3) Click your name in the upper right corner of the screen to access the "Netfile User Home" if you are not taken to the page by default;
- 4) Click "Signature Verification" and then "Request Document Signer Status";
- 5) Enter your complete name as it would be signed on an official document, and click "Create New Signer";

- 6) The system will produce a Signer ID and PIN number. Write down the Signer ID and PIN number and keep them in a safe place;
- 7) Click the "Print and Sign your Signature Card (for San Francisco filers)" link;
- 8) Do one of the following:
 - a) Bring the Signature Verification Card (Form SFEC-112a) and photo identification (SF City ID Card, State ID Card, or Passport) to the Ethics Commission and sign the statement in the presence of an Ethics Commission staff person; or
 - b) Bring the Signature Verification Card (Form SFEC-112a) to a notary public and sign the statement in his or her presence. Documents verified by a notary public must have an official and current stamp. Once authorized, you may deliver the original signed Signature Verification Card (Form SFEC-112a) to the Ethics Commission. The Ethics Commission will not accept copies of the form.

Once your Signature Verification Card (Form SFEC-112a) has been approved by Ethics Commission staff, you will be able to sign electronic statements.

3. Establish an Electronic Filing Account for a Committee

If you have not filed electronic campaign finance statements previously, you will need to establish an electronic filing account for your committee. The committee electronic filing account differs from the Netfile User Account. The committee electronic filing account contains the transactions and forms for the committee and may be accessed by multiple committee officers with unique Netfile User Accounts.

Most often, the treasurer controls the electronic filing account for the committee. However, any authorized officer of a committee may be granted access. Additional signers on a statement, including controlling candidates, assistant treasurers, and principal officers who are required to sign statements but who are not entering information into the FPPC forms do not need access to the committee's account to sign statements. Access to the account is required only to complete the contents of FPPC forms. At least one officer of the committee must have access to the electronic filing account for the committee.

Each committee officer requesting access to the electronic filing account for the committee to complete FPPC forms should complete the following steps to create an electronic filing account for the committee:

- 1) Go to the Ethics Commission's web site at <http://www.sfethics.org> and click to register for campaign finance electronic filing under the heading "E-File Statements";
- 2) Click the link to the "Committee Account Registration Form (Form SFEC-112b)";
- 3) Complete the form and click the "Submit" button. Ethics Commission staff will review the request and send the account credentials to the e-mail address provided on the form. If you are using the free electronic filing system then continue to step four. If you are using third-party vendor software, you have finished the registration process;
- 4) When you receive the committee Filer ID and Password to the committee via e-mail, go to the Ethics Commission's web site at <http://www.sfethics.org> and click to login to the campaign finance electronic filing under the heading "E-File Statements";

- 5) Click your name in the upper-right corner of the page to access the Netfile User Home;
- 6) Click "Add a Free Account" and then "Local Campaign Filer Account";
- 7) Complete the form. **Enter the "Committee Name" exactly as you entered it on FPCC Form 410.** Enter the Filer ID and Password provided in the e-mail in step 4; and
- 8) Click "Link Local Campaign Filer Account";

You now have access to the committee's electronic filing account from your Netfile User Account.

How to Complete an Electronic Statement and Obtain Electronic Signatures From All Signers Using the Free Electronic Filing System

The treasurer or principal officer of the committee should complete the following steps to create a statement and obtain the electronic signatures of all signers on the statement:

- 1) To sign electronic statements using the free electronic filing system, login to your Netfile user account and, if you have access to more than one committee, click the appropriate committee name.
- 2) Click the "Statements" menu and choose "Officer Information." Click your name in the "All Officers" table. If you are not listed as an officer, click to "Add a New Officer";
- 3) Under "Signatory Information," click the check box next to "Can Officer Sign Statements" and enter your Signer ID number in the box. Click to "Save Changes";
- 4) Add any additional required signers to the "All Officers" table, such as a controlling candidate, principal officer, or assistant treasurer and enter each individual's Signer ID. Complete steps 2-4 only once;
- 5) Proceed with entering the committee's transactions into the electronic filing system;
- 6) When creating a new draft statement, click the name of each signatory in one of the four signer boxes;
- 7) Create the draft statement and review the document by clicking the "View" button from the home page;
- 8) Click "E-file" to submit the statement;
- 9) Enter a valid e-mail address to receive an e-mail confirmation of submission and click "Submit E-Filing to Agency." Your filing will be moved into a pending queue, awaiting the confirmation of all signers. If the committee officer who submitted the statement is also a signer, that committee officer must also sign the statement;
- 10) An e-mail will be sent to all signers notifying them that a statement is awaiting their review and signature. Instruct any additional signers to check their e-mail and follow the instructions in the e-mail to sign the document. Statements that are not signed by all signers within 30 days will be removed from the pending statements queue. The system will e-mail daily reminders to each signer as a reminder to review the statement;

- 12) Click your name in the upper-right corner of the page to access the Netfile User Home;
- 13) Click "Signature Verification" and then "View Pending Filings";
- 14) Click "View Filing" to review the statement;
- 15) Click "Accept" or "Reject" to approve or disapprove of the statement; and
- 16) Enter your signer PIN number and click "Accept/Reject Filings." The statement will automatically submit to the Ethics Commission once ALL of the signers have signed the statement.

Secondary signers, such as a controlling candidate, assistant treasurer, or principal officer, should complete the following steps to sign a document:

- 1) After the treasurer has submitted a statement, you will receive an e-mail notification that a statement awaits your review. Click the link in the e-mail to be taken to the system login screen;
- 2) Login to the electronic filing system using your Netfile User Account credentials;
- 3) Click your name in the upper-right corner of the page to access the "Netfile User Home" if you are not taken to that page by default;
- 4) Click "Signature Verification" and then "View Pending Filings";
- 5) Click "View Filing" to review the statement;
- 6) Click "Accept" or "Reject" to approve or disapprove of the statement; and
- 7) Enter your signer PIN number and click "Accept/Reject Filings." The statement will automatically submit to the Ethics Commission once ALL of the signers have signed the statement.

Statements will not be considered accepted until ALL of the signers indicated on the draft statement have completed the signature process by reviewing the statement and entering their respective PIN numbers. **If a statement in the pending filings queue before a filing deadline, but is not verified by all signers until after the filing deadline, the statement will be considered late.**

How to Sign Statements Using Electronic Filing Software From Third-Party Vendors

Committees subject to electronic filing requirements must file electronic forms in the California Secretary of State's CAL format version 2.01. No other electronic format will be accepted. Committees can satisfy this requirement by filing in the San Francisco Ethics Commission free electronic filing system, as detailed above.

Alternatively, committees may choose to enter their filing information into software produced by third-party vendors certified by the Secretary of State. A list of third-party vendors is available at the following address: http://www.sos.ca.gov/prd/approved_vendors.htm

All signers of electronic statements, regardless of whether the committee is using the free electronic filing system or a third-party vendor system, must have a Netfile User Account and complete the Signature Verification Card (Form SFEC-112a). All committees must also have an electronic filing account with the Ethics Commission to file electronic statements.

Committees using approved third-party software must input the Signer ID number for each signer into the CAL document in the third field of the "CVR3" record. Third-party vendors may require that filers complete this process manually or may support inputting the Signer ID number automatically in the CAL document from within the software product. Third-party vendors may require filers to use the Ethics Commission's free electronic filing system to approve and sign statements or may provide a method to sign statements from within the software product. Any third-party vendor can support signing electronic statements and submitting statements directly into the Ethics Commission's electronic filing system by complying with the open source Vendor Submission API at <https://bitbucket.org/netfileopensource>. Contact your vendor for more information about how your software complies with the electronic signature requirements.

S:\CAMPAIGN\2013\Draft Notice re E-Signature 2013.docx



SFEC Form 112a - SIGNATURE VERIFICATION CARD

IMPORTANT! The notification e-mail address listed below should be an address you check frequently!

Name : Automatically Completed by System (ID # XXXXXX)
Daytime Phone : Automatically Completed by System
Notification E-mail Address : Automatically Completed by System

By signing and submitting this Signature Verification Card, I acknowledge that documents filed electronically with the San Francisco Ethics Commission using the ID number set forth above will bear my virtual signature and that I am signing such documents under penalty of perjury under the laws of the State of California.

I also acknowledge that every electronically filed document bearing my virtual signature will be treated the same as a paper document bearing my actual signature for purposes of applicable state and local law.

X _____
Signature

Date

If you are submitting this form in person, you must show a government issued photo identification and sign this in the presence of Ethics Commission staff. If you are submitting this form by mail, you must have your signature acknowledged by a notary public.

Staff/Notary Public Use Only

The foregoing instrument was subscribed and sworn to/affirmed before me this _____ day of _____, 20____ at _____, _____ State _____ Country by _____

Name of Filer

☐ Filer Presented Government Issued Photo Identification (SFEC Use Only)

Signature of ☐ Ethics Commission Staff ☐ Notary Public

Commission Expiration Date: _____

Registration Number: _____

Stamp



San Francisco Ethics Commission

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SHARE TEXT FONT SIZE A⁺ A⁻

SFEC-Form 112b - Committee Account Registration Form

Use SFEC Form 112b to request an electronic filing account for a San Francisco committee required to file electronic campaign disclosure statements. The Commission will only accept SFEDS forms from an authorized committee treasurer or representative with an active Netfile User Account.

You may also use this form to provide written notice that your committee intends to voluntarily opt to file electronic statements in lieu of paper statements.

If you do not have a Netfile User Account, please create a new account first and then submit the SFEDS account registration form for the committee.

Date AM

Name of Committee
or Filer

FPPC ID Number

Type of Committee (Blank)

First Name of
Treasurer or
Authorized
Representative

Last Name of
Treasurer or
Authorized
Representative

E-mail Address of
Treasurer or
Authorized
Representative

Telephone Number (Blank)

Street Address (If
Major Donor or
Independent
Expenditure
Committee)

☐ Opt to File Electronic
Statements in Lieu of
Paper Statements

Submit

Download Viewers: 





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

Date: April 12, 2013

PAUL A. RENNE
VICE-CHAIRPERSON

To: Members, Ethics Commission

BENEDICT Y. HUR
COMMISSIONER

From: John St. Croix, Executive Director
By: Steven Massey, Information Technology Officer

JAMIEENNE S. STUDLEY
COMMISSIONER

Re: Contracting for the Electronic Filing System

JOHN ST. CROIX
EXECUTIVE DIRECTOR

The Commission is nearing the end of a three-year contract with Netfile to provide an electronic filing system for campaign finance, lobbyist, campaign consultant and conflict of interest regulation. This is the second three-year contract the Commission has signed with Netfile. To contract out for professional services, the Commission, as it has done with prior contracts, must seek approval from the Civil Service Commission (CSC). When reviewing a request to contract out for professional services, the CSC takes into consideration whether the Commission has formally determined that contracting out is the most effective way to provide the electronic filing system. Staff is presenting this matter to the Commission for its consideration at this time in order to account for the time it takes for a contract to be approved by all parties in the City. **Staff recommends that the Commission endorse the proposal that contracting out is the most effective way to provide the electronic filing system.**

Background

From 1999 through 2007, the Department of Technology (DT) provided an electronic filing system, called the On-line Filing System (OLFS), for campaign committees to file the Fair Political Practices Commission (FPPC) Form 460 with the Commission. The system was costly to maintain because it was only used by San Francisco filers. At the February 12, 2007 meeting, a representative from the DT informed the Commission that the DT would terminate support for the OLFS because the DT could no longer provide support for its software architecture and that building a new system to replace the OLFS would be a prohibitive financial investment.

At the April 9, 2007 meeting, the Commission endorsed staff's recommendation to contract out for an electronic filing service. On August 20, 2007, the Commission received approval from the CSC to contract out for electronic filing services. On October 31, 2007, the Commission entered into a contractual agreement with Netfile to provide the Commission with an electronic filing system and develop additional services and capabilities.

Netfile delivered on an ambitious deployment schedule to replace the Commission's previous On-Line Filing System (OLFS). Netfile also invested a significant number of hours and resources at no additional cost to the Commission to meet requests and needs as they arose from staff, filers, and members of the public. The Commission has also invested significant time into building an electronic filing infrastructure with Netfile's system. By sharing an electronic filing system with other cities and counties in California, the Commission reduced the cost of developing new functionality and maintaining the system software and servers.

At the December 14, 2009 meeting, the Commission endorsed staff's recommendation to renew the Netfile contract for an additional three-year term. On September 30, 2010, the Commission entered into a new contractual agreement with Netfile to provide existing electronic filing services in addition to new features to be built out over the three-year term.

Netfile continued to deliver on projects for the Commission and accommodated requests from staff to develop new features as needs changed during the course of the contract term. This included building an application programming interface (API) for the public to programmatically access the Commission's databases, a new campaign finance filing application to accommodate new functionality such as electronic signatures developed in response to Assembly Bill 2452 and other requests from filers. Netfile retains a team of experienced programmers with in-depth knowledge of campaign finance filing requirements and the Secretary of State's electronic filing format that has been critical to developing these new features.

Netfile is still the only vendor in California that offers a complete electronic filing system solution for agencies that is capable of meeting and that does meet the Commission's needs. For these reason, staff recommends that the Commission find that contracting out is the most effective way of providing an electronic filing system. The remainder of this memo provides an update on the Netfile contract and its implementation to date. Staff will be pleased to respond to any questions that Commissioners may have at the April 22, 2013 meeting.

Contract Update

During the first two years of current contract, the Commission staff worked with Netfile to make substantial improvements in electronic filing system services. Significant accomplishments include:

- Implemented electronic filing of monthly lobbyist reports and built a web site to access the data;
- Built a new system for lobbyists to register on-line;
- Constructed an application programming interface (API) for the public to directly access the lobbyist data from software application and websites outside the City;
- Added new campaign finance forms in electronic format including FPPC Form 450 and 470;
- Integrated the campaign finance database and lobbyist database with the City's data.sfgov.org web site, which provides the public with tools to view, sort, and filter data.

download data in a variety of formats, build charts and graphs, and access the data from an API;

- Began development of a public financing component for the campaign finance filing application to be implemented in January 2014 for the November 4, 2014 election. The component will provide a method for campaigns to enter contributions once only, and report them on both public financing forms and FPPC disclosure forms;
- Developed an electronic signature process to implement Assembly Bill 2452;
- Created a new campaign finance filing application that added the following features often requested by users of the system:
 - Single sign-on for treasurers with multiple committees;
 - Streamlined data entry and faster data access, particularly for Form 460 Schedules D and G;
 - Ability to edit previously entered bills, payments, and loans;
 - Advanced transaction filtering;
 - Ability to change cover-page information;
 - Ability to add document notes to be attached to a statement;
 - Page help for every form;
 - Ability to add committee officers and assign signatory permissions; and
 - Easier statement amendment process.
- Added a new fines tracking and revenues reporting component to the Commission's administrative system; and
- Added single sign-on for SEI electronic filers with multiple positions.

Decision Point

Shall the Commission find that contracting out is the most effective way of providing an electronic filing system that meets the needs of the Ethics Commission, its filers and members of the public?





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BENEDICT Y. HUR
COMMISSIONER

MICHELLE S. STUDLEY
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Regular Meeting of April 22, 2013

1. Statements of Economic Interests.

April 2, 2013 was the deadline for the receipt of annual Statements of Economic Interests (SEIs). Staff is currently processing the SEIs, Sunshine Declarations and Ethics Training documents that have been received, which will be posted to the Commission's website.

2. Investigation and enforcement program.

As of April 16, 2013, there are 22 pending formal complaints alleging violations within the Ethics Commission's jurisdiction. At its special meeting of April 1, 2013, the Commission approved one settlement agreement and it is available to review on the Commission's website.

Category	# of Complaints
Campaign Finance	10
Conflict of Interest	7
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	3
TOTAL	22

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on January 31, 2013 for the Second Semi-Annual statement, which covers the reporting period ending December 31, 2012. The next filing deadline that applies to all campaign filers is July 31, 2013 for the First Semi-Annual Statement, which covers the reporting period ending June 30, 2013.

b. Collection of late filing fees and contribution forfeitures. In the FY12-13, as of April 15, the Commission collected a total of \$37,438 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$31,230 of which waiver requests are pending for \$210; and \$6,659 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						TOTAL	\$6,659

4. Revenues report.

For FY 12-13, the Commission was budgeted to generate \$100,000 in revenues. As of April 15, 2013, the Commission received \$ 112,638 as summarized below. The figure represents collection of approximately 113 percent of expected revenues for FY 12-13.

Revenues received as of April 15, 2013:

Source	Budgeted Amount FY 12-13	Receipts
Lobbyist Fees	\$27,000	\$46,075
Other Ethics General	\$1,000	\$110
Campaign Finance Fines	\$50,000	\$37,478
Campaign Consultant Fees	\$18,000	\$6,800
Lobbyist Fines	\$1,000	\$600
Statements of Economic Interests Fines	\$1,000	\$5,480
Other Ethics Fines	\$1,000	\$1,300
Campaign Consultant Fines	\$1,000	\$150
Unallocated	\$0	\$14,645
Total	\$100,000	\$112,638

5. Lobbyist program.

As of April 16, 2013, 82 individual lobbyists were registered with the Commission. For FY 12-13, as of April 16, 2013, total revenues collected were \$46,675, including \$46,075 in lobbyist registration fees and \$600 in late fines. The filing deadline for the next lobbyist disclosure statement is May 15, 2013.

6. Campaign Consultant program.

As of April 15, 2013, 20 campaign consultants were registered with the Commission. \$6,800 in registration fees and \$150 in fines have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Monday, June 17, 2013. Staff will send reminders to all active campaign consultants two weeks before the deadline.

7. Outreach and Education.

The first candidates' training for the November 5, 2013 election will be held on May 1, 2013 at noon – 1:30 p.m. in Room 421 City Hall. Staff will provide information to candidates and their treasurers about campaign finance requirements, the voluntary expenditure ceilings applicable to each race (City Attorney, Treasurer, Assessor/Recorder) and the public financing program applicable to candidates for the District 4 seat on the Board of Supervisors.

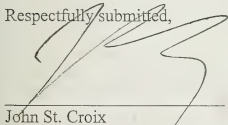
The Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training
- SIA Template Language Training

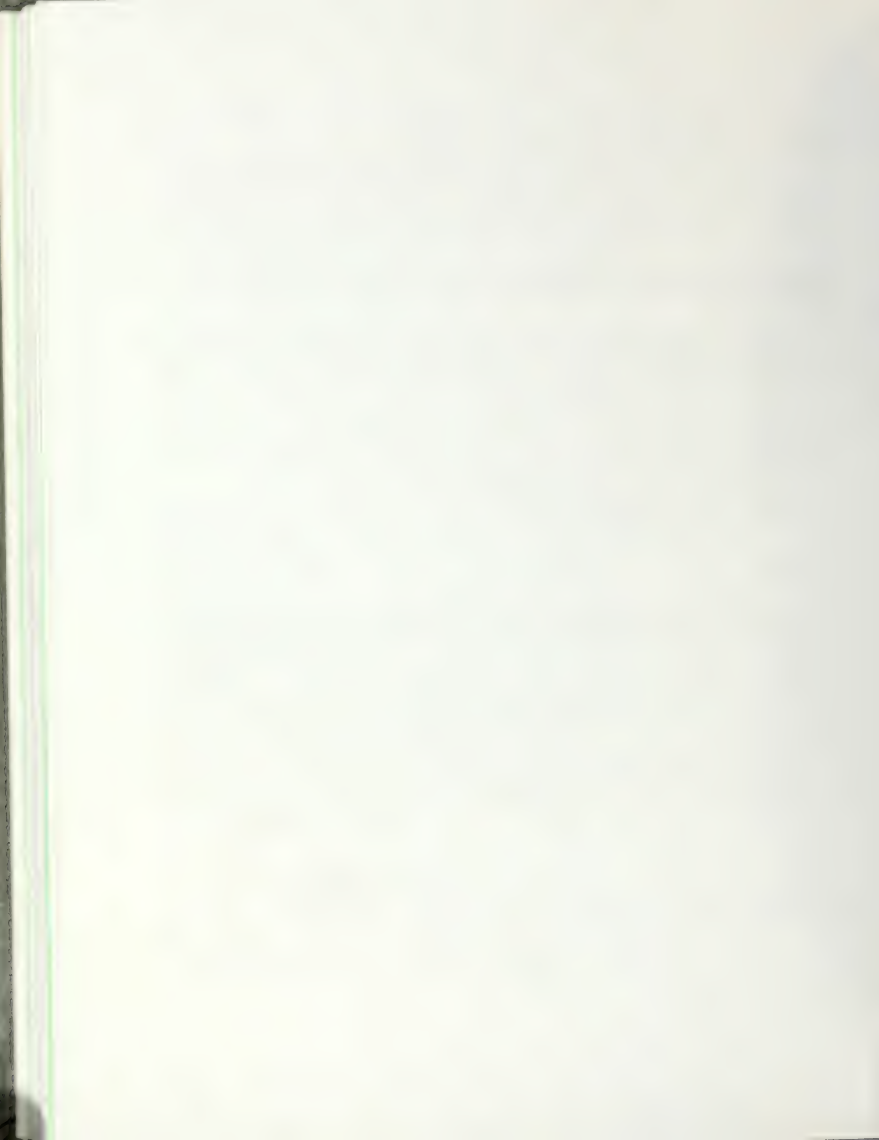
8. Open Data

Commission staff has been working closely with the Department of Technology to synchronize the Commission's campaign finance and lobbyist data with the City's open data system at data.sfgov.org. The system can be used to filter, sort, and download City data, build charts and summaries, and access City data via an application programming interface (API). Socrata, the vendor that builds the software for the data.sfgov.org system, wrote a case study about San Francisco's site and the ability to move data into the system using a software product called FME. Socrata chose to focus the case study on the Commission's use of the system. The case study is called "*Set it and Forget it" Saves San Francisco Time* and is available at the following URL: <http://www.socrata.com/san-francisco-case-study/>

Respectfully submitted,



John St. Croix
Executive Director



"Set It and Forget It" Saves San Francisco Staff Time

San Francisco's more than 800,000 residents come up with a lot of requests. From sidewalk repairs to campaign finance information, the City and County of San Francisco (CCSF) processes hundreds of requests a day.

Sound time consuming? It is.

That is why San Francisco moved to a Socrata open data portal in 2012 with the goal of digitizing requests for data, updating the data more easily, and publicly tracking progress on requests.

It's also why San Francisco began using Safe Software's FME platform to help staff move their daily dose of data automatically onto the Socrata platform.

Open, Transparent, and Automatic

In 2011, San Francisco's leadership, including Chief Innovation Officer Jay Nath and Chief Information Officer Jon Walton, pushed for an open data portal as a "one-stop destination for all approved City data." They had visions of greater transparency and convenience for citizens but soon discovered, as many organizations do, that standardizing City data onto one platform improves internal efficiency.

"It's nice to be able to point to one spot and say to a colleague, 'You want this information? It's going to be on this site. You

can download it, manipulate it, create views. And, then, also, you can embed it into your own website," says Jeff Johnson, Manager of CCSF's Enterprise GIS Program and Open Data Services at the Department of Technology.

The Ethics Commission's High Profile Job

One of Johnson's favorite examples of greater efficiency through open data is the San Francisco Ethics Commission. It turns out that reporters, lobbyists, candidates, and others involved in San Francisco politics closely watch the data the Ethics Commission reports.

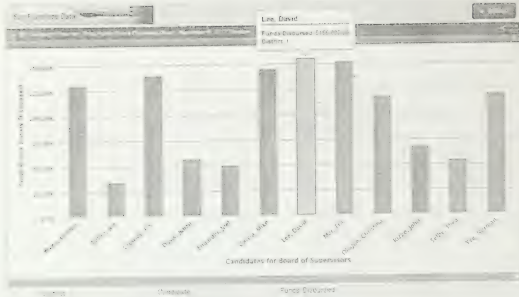
"We're under a lot of pressure to be accurate," says Steven Massey, Information Technology Officer for the CCSF Ethics Commission.

Before the November 2012 elections, the Ethics Commission decided to use the open data portal to optimize for accuracy and streamline their efforts. Massey worked with Johnson to move all campaign finance and lobbyist data on to the portal and have it automatically publish to embedded charts on sfethics.org.

"We replaced many of the tables throughout our website with embedded Socrata tables so that users can export the data. We've gotten really good feedback from the community about these charts, since they are much easier to read than our PDF financial reports," says Massey.

In addition, Johnson helped Massey make uploading data to Socrata require, truly, no time at all. Johnson suggested Safe Software's FME product to bring the Ethics Commission data into Socrata automatically. "I was familiar with Safe Software. I use it in my GIS work, but it can be used for more file types than just geographical information," says Johnson.

Johnson asked Safe Software to develop a writer specifically for loading a broad range of data files to Socrata, eliminating the need for a unique connector to be written by San Francisco's busy IT team. Having this writer paid off in significant time savings.



Better Reporting of Ethics Information

Before Socrata and FME, news sources would collect the data on candidate funding by downloading PDFs posted by the Ethics Commission and tallying up numbers by hand. The process often came with many questions for Massey and, sometimes, incorrect results were reported.

In the 2012 election season, reporters from the SF Weekly, SF Appeal, SF Bay Guardian, SF Chronicle, and SF Examiner were all able to report on the data the Ethics Commission publishes without going through that manual process.

"Now, when people call in, you direct them to the site and you're done," says Massey.

Johnson is excited about improving both transparency and efficiency for CCSF staff, without asking for much extra effort from them. "I don't want any policy directs City employees to go into the data.gov.org or something and try to make it as easy as possible to use," he says. "They have a job to do: get patients, work on the potholes, share financial data. That's their job."

A Smooth Transition

Massey says that the transition from PDFs to automatic uploads to the open data portal was quick. "Within a month," he says, "I had what I

"I now have uploads that run every night from various databases around the city. We call it 'set it and forget it.'"

and visualized data that Socrata and FME made possible.

Campaign finance data has received wider attention now that it is more easily available. "Prior to Socrata, campaign finance data was most valuable to reporters. It made it into the newspaper quite a bit. Now it's in regular demand from a broader audience," says Massey. Massey considers this a win for public data transparency.

Getting Citizens What They Need, Easily

Overall, time savings, improved transparency, and greater accuracy have meant the most to the CCSF team. "I now have uploads that run every night from various databases around the city. We call it 'set it and forget it,'" says Johnson.

Johnson is even canvassing city and county agencies to instruct his colleagues about the use of FME along with Socrata. "FME is a very simple tool. That's the beauty of it," Johnson wants to keep San Francisco's staff working hard on what matters: helping more than 800,000 citizens with the data and support they need everyday, as easily as possible. •

Highlights

• SF staff are able to respond more quickly and easily to citizen requests

• Ethics Commission, CCSF and other data is updated to include information every night via FME

• Socrata data embeds into the Ethics Commission website and can be downloaded

• Greater accessibility to campaign finance data increases citizen engagement with it



For more information: (206) 340-8008
info@socrata.com • www.socrata.com

[DRAFT]
Minutes of the Regular Meeting of
The San Francisco Ethics Commission
April 22, 2013
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

GOVERNMENT
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MAY 22 2013

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PUBLIC LIBRARY

I. Call to order and roll call.

Chairperson Hayon called the meeting to order at 5:30 PM. Chairperson Hayon stated that Commissioner Studley was excused. She also noted that Commissioner Liu had resigned and her replacement has yet to be assigned.

COMMISSION MEMBERS PRESENT: Beverly Hayon, Chairperson; Paul A. Renne, Commissioner; Benedict Y. Hur, Commissioner. Commissioner Studley was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Steven Massey, Information Technology Officer; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Josh White, Deputy City Attorney (DCA).

OTHERS PRESENT: Jonathan Pearlman, Historic Preservation Commissioner; Nicole Wheaton, Director of Appointments, Office of the Mayor; David Pilpel; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Request for Waiver from member of Historical Preservation Commission, dated April 15, 2013;
- Waiver request from Mr. Pearlman, dated April 2, 2013;
- Letter from Mayor Ed Lee re: San Francisco Campaign and Governmental Conduct Code, Section 3.224 – Prohibition on Representing Private Parties Before Other City Officers and Employees – Compensated Advocacy, dated April 8, 2013 and supporting document;
- Staff Memorandum re: Regulation re: CFRO Section 1.112 and draft regulations, dated March 20, 2013;
- Staff Memorandum re: Contracting for the Electronic Filing System, dated April 12, 2013;
- Draft minutes of the Commission's special meeting of April 1, 2013;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

III. Discussion and possible action a request from Jonathan Pearlman and Mayor Lee for a waiver from Campaign and Governmental Conduct Code section 3.224 (compensated advocacy ban) on behalf of Mr. Pearlman, a licensed architect who occupies Seat 3, the architectural historian seat, on the Historic Preservation Commission (HPC), so that Mr. Pearlman may represent private parties before other City officers and employees while he serves on the HPC.

Jonathan Pearlman, HPC Commissioner, stated that he is a practicing architect in San Francisco. He stated that he is serving on the HPC and is quite honored that Mayor Lee appointed him and that the Board supported the appointment. He stated that he cares about San Francisco and its historic buildings. He stated that he has practiced for about 19 years and continues to work on projects throughout the City. He stated that about 70% of his business is within the City – part of his work is presenting plans to the Planning Department or continuing to work with staff of the Planning Department or the Department of Building Inspection. He stated that the firm had about seven people in the 2000s, but now only has about four. He stated that, for the most part, he and his staff do not appear before any commission or board, as most issues are handled administratively. He stated that he has one project that is up for consideration before a commission, which is the Alexandria Theatre project. He stated that he has been solely responsible for that project and there is a hearing scheduled later on that week. He stated that no one else at his firm may present the issues on behalf of his client. He stated that, in the future, he expects to have more staff so that they would be able to present a project before a board or commission. He requested a waiver so that he may continue his livelihood and be able to continue serving on the HPC.

Commissioner Hur asked what Mr. Pearlman would do if he were not granted the waiver. Mr. Pearlman stated that he would probably not serve on the HPC because of the possible potential conflicts in the future. He stated that he would recuse himself, if any matter he had worked on came before the HPC. He stated again that he did not expect many, if any, projects to be heard by a board or commission. He stated that the waiver related to work he would need to do with staff.

Chairperson Hayon asked him about the requirements for Seat 3 on HPC. Mr. Pearlman stated that there are historians that do not work in the field and there are architects who work in the field, but are not historians. Commissioner Renne asked whether any other person who sat in Seat 3 on HPC had sought a waiver. Mr. Pearlman stated that, since HPC was relatively new, there has only been one other person in the Seat. He stated that that individual did not seek a waiver because he worked at a large firm and never presented anything before a board or commission. He also stated that there may not have been that many projects that the former Commissioner's firm had in the City.

Commissioner Renne reminded Mr. Pearlman that he would not use his position to bring any kind of influence on the decisions made on behalf of his or his client's projects. Mr. Pearlman stated that he would be extremely sensitive to that and would find other individuals in his firm who would present before the board or commission. He stated that he would do everything he could to avoid any appearance of taking advantage of his position.

Nicole Wheaton, Director of Appointments for the Mayor's Office, stated that Mr. Pearlman's appointment was unanimously approved by the Board about a month ago. Commissioner Hur asked for the number of candidates. She stated that outreach for the position began at the end of last year and there was a 60-day window from January 1. She stated that the Mayor's Office reviewed between 25-30 candidates and narrowed it to three serious candidates. She stated that the waiver issue was discussed with Mr. Pearlman and would not have been necessary for the other two candidates.

Commissioner Hur asked what distinguished Mr. Pearlman from the other candidates. Ms. Wheaton stated that all of the candidates were fantastic, but what they liked about Mr. Pearlman was that he met all of the qualifications and his philosophy matched what the Mayor wanted to see. She stated that he was a small-business owner and that they were looking for someone with a pragmatic approach to historic preservation. She stated that he has experience in the City working on projects in the City and he has worked on smaller projects with residents and has first-hand experience with preservation. She stated that his approach towards preservation benefits the community now and into the future.

Motion 13-04-22-1 (Renne): Moved, but not seconded that the Commission grant the waiver.

Commissioner Hur stated that he would like to hear public comment first.

Public Comment:

David Pilpel spoke in support of the waiver. He stated that he has had concerns about the Commission granting waivers over time, but that this seat needs to be filled and calls for specific qualifications. He stated that it would have been helpful if the waiver request came sooner, as Mr. Pearlman has already been a part of two HPC meetings.

Executive Director St. Croix stated that the matter had been originally planned for the last meeting, but was postponed due to scheduling problems.

Chairperson Hayon stated that she was concerned about putting undue obstacles in the way of citizens in San Francisco who want to serve, especially when an area of special expertise is required. She stated that the Commission wants people to participate in the governmental process and should not make it more difficult or impossible to serve.

Commissioner Hur stated that he was struggling with the term "necessary" as it sounds like there were other qualified candidates. He stated that he is inclined to vote to allow the waiver because he also recognizes that, if the Commission does not grant the waiver, the Commission is essentially saying that a small-business owner would not be able to sit on a position like this. He did not agree with categorically eliminating an entire group of people from serving on this Commission. Chairperson Hayon agreed.

Motion 13-04-22-2 (Renne/Hur): Moved, seconded, and passed (3-0; Studley excused) that the Commission grant the waiver.

Mr. Pearlman thanked the Commissioners.

IV. Discussion and possible action on proposed Ethics Commission regulations to require signers of electronic campaign finance reports to file a completed Signature Verification Form with the Commission.

Steven Massey, Ethics Commission Information Technology Officer, stated that local agencies may now accept campaign finance statements in an electronic format, instead of paper. He stated that section 1.112 of the Campaign Finance Reform Ordinance was amended last year, approved by the Mayor and Board of Supervisors, and went into effect in March 2013. He stated that all statements must be signed under the penalty of perjury and that the staff memorandum explains how filers will be able to comply with the signature requirement. He stated that staff reviewed what has been proposed in other jurisdictions and staff decided that the filer should sign a signature card and then receive a filer ID and PIN code. He stated that the cards would only be completed once and would be sufficient for all filings filed with the Ethics Commission. He stated that San Diego developed a similar procedure that it began this year, but that the paper is faxed to the office. He stated that staff proposes that the person either sign the card in front of Ethics Commission staff or have the person get the signature card notarized.

Public Comment:

David Pilpel stated that he supported the proposal. He stated that many potential obstacles appear to be addressed by the notary requirement. He commented on the draft notice to committees and asked when staff would notify them of the change. He also stated that Mr. Massey is doing a good job.

Mr. Massey stated that the committees would be notified as soon as possible because they will need some time to complete the card, regardless of whether they will come into the Ethics Commission office. He stated that copies of an individual's ID would not be made or kept by Commission staff and that it would only be used to verify identity in person. Chairperson Hayon asked whether staff would begin the process, even though the Board may not approve the change. Executive Director St. Croix stated that the Board could stop the process, but then staff would just have signature cards.

Commissioner Hur asked whether Mr. Massey was aware of any issues about how San Diego or any other jurisdictions have had using this process. Mr. Massey stated that in San Diego, there is no way to verify who sent the form into the office and who signed it or who is receiving the PIN. He stated that staff would like to use the card for electronic filings for Forms 410 and 501 in the future. He stated that it is important to verify a filer's identity. Executive Director St. Croix stated that the Commission will monitor the process and decide if filers need to sign a new signature card again.

Mr. Massey stated that one of the reasons staff developed this signature card was to separate the candidate and treasurer, using a candidate-controlled committee as an example. He stated that each individual would be required to check in before the statement can be filed. He stated that a

treasurer could complete a form, but the form would remain in a pending queue until the candidate confirmed the form as well.

Motion 13-04-22-3 (Hur/Renne): Moved, seconded, and passed (3-0; Studley excused) that the Commission approve the change to the CFRO regulation.

V. Discussion and possible action on Netfile contract.

Mr. Massey stated that the Commission has a contract with NetFile and it ends in September. He stated that the contracting process is lengthy. He stated that NetFile is the only vendor authorized by the Secretary of State. He stated that it is shared by over 20 cities and counties in the state, which has lowered maintenance costs. Executive Director St. Croix stated that the City has a lot of requirements when it comes to contracts. Commissioner Hur thanked Mr. Massey for his hard work on this and on many other website issues. He stated that it does not appear that there are many viable alternatives. Executive Director St. Croix stated that there is no alternative, but if the Commission did not approve, then staff would try to come up with some alternative. He stated that NetFile's work with the City has helped them to make their product more desirable for other jurisdictions. He stated that staff is now asking for more developments and so costs will increase. Mr. Massey stated that the estimated cost will be less than \$120,000/year. Executive Director St. Croix stated that staff needs the Commission's approval in order to continue with the contract process with other departments.

Public Comment:

David Pilpel stated that the amount quoted is less than the fully loaded costs of a programmer. He stated that a new contract with NetFile is the best course of action.

Motion 13-04-22-4 (Renne/Hur): Moved, seconded, and passed (3-0; Studley excused) that the Commission endorse staff's proposal that contracting out is the most effective way to provide the electronic filing system that meets the needs of the Ethics Commission.

VI. Discussion and possible action on the minutes of the Commission's special meeting of April 1, 2013.

Public Comment:

David Pilpel stated that he found no errors.

Motion 13-04-22-5 (Hur/Renne): Moved, seconded, and passed (3-0; Studley excused) that the Commission approve the minutes of the Commission's special meeting of April 1, 2013.

VII. Discussion of the Executive Director's Report.

Executive Director St. Croix stated that the May meeting is scheduled on a City holiday, so it has been rescheduled for a special meeting at 5:30 PM on Thursday, May 30. He stated that the Commission plans on addressing the Budget & Legislative Analyst's report that it issued last year and that the discussion may take some time. He also attached a publicity piece from a company that chose to highlight the Commission's website and the use of the product.

Public Comment:

David Pilpel thanked staff for including information under section two about gentlemen's agreements.

VIII. Items for future meetings.

None.

Public Comment:

None.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

X. Adjournment.

Chairperson Hayon thanked staff about her first meeting as Chair and stated that it was the shortest meeting she had ever attended.

Motion 13-04-22-6 (Renne/Hur): Moved, seconded, and passed (3-0; Studley excused) that the Commission adjourn.

The meeting adjourned at 6:16 PM.





**San Francisco
Ethics Commission**



25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

Date: May 15, 2013

Re: Notice of Consideration of Proposed Regulations at the May 30, 2013 Special Meeting of the Ethics Commission

At its special meeting on Thursday, May 30, 2013, at 5:30 p.m. in Room 416 City Hall, the San Francisco Ethics Commission will discuss draft regulations to implement the electronic filing of Statements of Economic Interests (Form 700 or SEI) with the Ethics Commission. The proposed regulations clarify San Francisco Campaign and Governmental Conduct Code sections 3.1-103, 3.1-105, 3.1-500 and 3.1-501. Staff anticipates that electronic filing of SEIs with the Commission will take effect beginning January 1, 2014.

The proposed regulations will be available for review at the Commission office and on its website.

05-17-13P02:42 RCVD

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MAY 17 2013

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Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

35-22-13P04:02 RCV

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
May 30, 2013 5:30 P.M.
and AGENDA**

Room 416 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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**NOTE: THIS IS NOT THE DATE AND ROOM OF THE COMMISSION'S
REGULAR MEETING.**

- 30/13
- I. Call to order and roll call.
 - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
 - III. Discussion and possible action on request for waiver from Alan Martinez, an architect who formerly held a seat on the Historic Preservation Commission, from the one-year ban on communicating with his former department in order to influence a government decision. (Attachments: April 17, 2013 letter from Mr. Martinez and May 20, 2013 staff report.)
 - IV. Discussion and possible action on Budget Analyst report. On June 5, 2012, the Budget Analyst issued a report comparing the laws of the City and County of San Francisco and the City of Los Angeles. The report examined four areas of policy and enforcement: campaign financing, enforcement and education, lobbying, and transparency. On December 4 and 10, 2012, and February 27, 2013, staff held interested persons meetings to obtain feedback on the policy options listed by the Budget Analyst. At this meeting, the Commission will consider recommendations and comments made at the Interested Persons meetings, as well as staff comments. (Attachment: June 5, 2012 Budget Analyst report; May 20, 2013 staff report with attachments; other written comments.)
 - V. Discussion and possible action on draft regulations to implement the electronic filing of the Form 700 Statement of Economic Interests with the Ethics Commission beginning on January 1, 2014. (Attachment: May 21, 2013 staff report with draft regulations.)
 - VI. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission. Possible Closed Session.

- a. Public comment on all matters pertaining to Agenda Item VI, including whether to meet in closed session.
- b. Vote on whether to assert attorney-client privilege and meet in closed session under Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff. (Action.)
- c. Conference with Legal Counsel: Anticipated litigation as plaintiff. (Discussion and possible action.)

Number of possible cases: 2

- d. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation as plaintiff. (Discussion and possible action.)

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission moves (not) to disclose its closed session deliberations re: anticipated litigation.

- VII. Discussion and possible action on the minutes of the Commission's regular meeting of April 22, 2013. (Attachment: April 22, 2013 draft minutes.)
- VIII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)
- IX. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XI. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order

the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: www.sfgov.org/ethics.

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ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

Date: May 20, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director

PAUL A. RENNE
VICE-CHAIRPERSON

BENEDICT Y. HUR
COMMISSIONER

By: Mabel Ng, Deputy Executive Director

Re: Request for waiver from one-year post-employment restriction

AMENNE S. STUDLEY
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Alan Martinez, an architect who formerly occupied Seat 1 on the Historic Preservation Commission (HPC), has asked the Ethics Commission to grant him a waiver from the one-year post-employment restriction set forth in San Francisco Campaign and Governmental Conduct Code sections 3.234(a)(2). For the reasons set forth in Mr. Martinez's letter, staff recommends that the Commission grant the waiver; however, staff recommends that the waiver be limited to communications Mr. Martinez has with the Planning Department regarding architectural plans and projects involving his clients and not to other matters such as lobbying or advocating to secure a contract on behalf of other persons. Mr. Martinez will attend the Commission's May 30, 2013 special meeting in order to address any questions the Commission may have.

Background

Mr. Martinez served for four years ending March 1, 2013, as a member of the HPC in a seat designated for a licensed architect meeting the Secretary of the Interior's Professional Qualifications Standards for historic architecture. He states that he is a self-employed architect who works on small projects. He seeks a waiver so that he may communicate with the Planning Department and, if necessary, the Planning Commission, regarding his work for his clients.

Relevant Laws

Section 3.234(a)(2) of the San Francisco Campaign and Governmental Conduct Code provides the following:

No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

Ethics Commission Regulation 3.234-2 states that section 3.234(a)(2)

applies to attempts to influence any governmental decisions made by *the department, board, commission, office or unit of government for which an officer or employee served*, including decisions in which the officer or employee had no prior involvement as well as decisions related to matters that first arise after the officer or employee has left the department, board, commission, office or unit of government (emphasis added).

Under section 3.234(c), the Commission may waive the restrictions in section 3.234(a)(2) if the Commission makes a finding that granting a waiver would not create the potential for undue influence or unfair advantage. A request for a waiver must be in writing and include information describing the former position held by the employee and reasons why granting a waiver would not create the potential for undue influence or unfair advantage. Ethics Commission Reg. 3.234-4(a)(1). In making its determination, the Commission may consider: the nature and scope of the communications the individual will have with his former department, the subject matter of such communications, the former position held by the employee, the type of inside knowledge that the individual may possess, and any other factors the Commission deems relevant. EC Reg. 3.234-4(a)(5).

Discussion

Staff believes that there are two issues that must be decided: (1) Does Mr. Martinez need to obtain a waiver in order to contact the Planning Department? (2) If yes, should the Commission grant him the waiver?

1. *Does Mr. Martinez need a waiver?*

Mr. Martinez states in his letter that he understands that it makes sense for the one-year post-employment or service ban to apply to any dealings he may have with the HPC, the board on which he served. Yet he does not believe that it makes sense that the ban would also cover his dealings with the Planning Department, as "such dealings would be regarding matters that would not be within the jurisdiction of the HPC." He adds, "The Planning Dept. and Commission deal with matters of far greater scope than the matters that come before the HPC." When asked whether he needed a waiver, staff orally advised him to seek one.¹

As mandated by the Charter, the Planning Department provides all the staff support for the HPC and follows the HPC's direction in providing that support. But the Department's work is much broader than just supporting the HPC. On its website, the Planning Department indicates that its principal activities include:

- Development and maintenance of the City's General Plan.
- The development of area plans based on the General Plan, to provide more specific guidance for the development of the various City areas.

¹ When giving oral advice, staff generally provides the most conservative advice.

- Reviewing of private development projects and proposed capital improvements projects and other physical projects involving City property for consistency and conformity with the General Plan.
- The formulation of planning policies and standards that will ensure a quality living and working environment for San Francisco neighborhoods and districts.
- Serving as an information center to assist citizens in understanding and applying to their property or to project proposals the policies of the General Plan and provisions of the Planning Code that might affect them.
- Anticipating and acting on the need for new plans, policies, and Planning Code changes.
- Applying the approved plans, policies, Planning Code and other regulations to proposed land use.
- Applying the Planning Code and applicable sections of the Administrative Code to applications for permits.

The HPC was created as a result of the passage of Proposition J in November 2008. The HPC is responsible for identifying and designating the landmarks in San Francisco and the buildings in the City's historic districts. Consisting of seven commissioners and a secretary, it reviews and approves applications for a Certificate of Appropriateness for exterior alterations, site improvements and new construction affecting the City's designated landmarks, buildings and sites within historic districts. The HPC also makes recommendations to the Mayor, Planning Commission, Board of Supervisors, and other City agencies concerning amendments to the historic preservation code. Under the Charter, Planning Department staff serves as staff of the HPC. See S.F. Charter § 4.135.

Whether Mr. Martinez must obtain a waiver in order to present plans to the Planning Department during the first year since he left the HPC involves a balancing of several factors. Ethics Commission Regulation 3.234-5(a) attempts to clarify which "department" or "commission" is the department or commission for which a City officer served. It states,

(1) The department, board, commission, office or other unit of government for which a City officer or employee served shall be:

(A) the unit of City government that the officer or employee directly served at the time he or she left City service or transferred to another department, board, commission, office or other unit of City government, including any government unit to which the officer or employee was loaned at that time; and

(B) any other unit of City government subject to the direction and control of the body of City government described in subsection (a)(1)(A) of this regulation.

(2) The following factors shall be used to determine the unit of government for which an officer or employee directly served:

(A) the unit of government that controlled the budget, personnel and other operations related to the officer's or employee's position;

(B) the department or agency on which the officer's or employee's position was listed in the City's conflict of interest code (Article III, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code);

(C) whether the law creating a unit of government suggests that it was a separate entity; and

(D) any other factors the Ethics Commission deems relevant.

Under Regulation 3.234-5(a)(1)(A), the unit of City government that Mr. Martinez directly served was the HPC. Under Regulation 4.234(a)(1)(B), Mr. Martinez also served the Planning Department, as staff of the Planning Department were subject to the control and direction of the HPC. Under Regulation 3.234-5(a)(2)(A), the Planning Department controls the budget, personnel and other operations related to the HPC (*See* Charter § 4.135). Because staff at the Planning Department plays a critical role in the work in the HPC, staff believes that it matters not so much that the HPC and the Planning Department were created under different Charter sections, or that the positions of the HPC are listed separately from those of the Planning Department in the City's Conflict of Interest Code. *See* C&GC Code §§ 3.1-269 (HPC) and 3.1-335 (Planning Department). Because the factors indicate that Mr. Martinez "served" the Planning Department for the purposes of the post-service ban, he must seek a waiver in order to contact the Department regarding architectural plans for his clients.

2. *Shall the Commission grant Mr. Martinez a waiver?*

Based on the information that Mr. Martinez has provided in his waiver request, staff does not believe that granting the waiver would create the potential for undue influence or unfair advantage. The nature and scope of his communications will relate to architectural plans for his clients; such plans must conform to the City's General Plan. Most importantly, Mr. Martinez is a solo practitioner – denying him a waiver would deny him the ability to engage in his vocation.

While staff believes that granting the waiver would not create the potential for undue influence or unfair advantages, staff recommends that the waiver be limited to Mr. Martinez's communications on behalf of his architectural clients, and not be extended to communications to influence governmental decisions on behalf of other persons or entities. The one-year post-employment communications ban was enacted to protect the integrity of government decision-making by preventing a public employee from using his influence or knowledge, gained as a public servant, to advance private interests at the expense of the public.

For the reasons discussed above, staff recommends approval of the request for a limited waiver from subsection 3.234(a)(2).

ALAN MARTÍNEZ, ARCHITECT

2298 THIRD STREET, SAN FRANCISCO, CA 94107
415.626.9379 awmarch@mac.com alanmartinezarchitect.com

FILED

13 APR 30 PM 2:07

ETHICS COMMISSION

April 17, 2013

Mabel Ng, Deputy Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, Ca. 94102

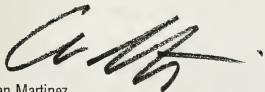
RE: *Request for Waiver from the Ethics Commission*

Dear Commissioners,

Until March 1, 2013 I was serving as a Commissioner on the Historic Preservation Commission (HPC). The Charter under Sect. 4.135 "Historic Preservation Commission" required that certain qualifications be fulfilled for each seat on the Commission. I held a seat under item 1: I was one of the a "licensed architects meeting the Secretary of the Interior's Professional Qualifications Standards for historic architecture". The intent of the qualifications provision was to ensure that the Commission had the benefit of the experience of working professionals familiar with conditions in San Francisco.

It was my understanding that after the completion of my four year term that Sec. 3.234 could be waived with respect to the one year restriction on communicating with Former Department. It makes sense that there would be a one year prohibition of my having any dealings with my former Commission, the HPC, but a prohibition of having with any dealings with the Planning Department or Planning Commission, particularly as such dealings would be regarding matters that would not be within the jurisdiction of the HPC, seems unduely restrictive. The Planning Dept. and Commission deal with matters of far greater scope than the matters that come before the HPC. I am a self employed single practioner doing relatively small projects, many of which do not even merit Planning review. However, some of my work will require some level of Planning review and I do not have a partner or employee who can take my place. As a one year prohibition on communicating with Former Department would make it difficult for me to do business in the City, I respectfully request a waiver.

Thank you for your consideration.



Alan Martinez

cc: MByrne, Deputy City Attorney
J Rahaim, Director of City Planning





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BENEDICT Y. HUR
COMMISSIONER

AMENNE S. STUDLEY
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: May 20, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director

Re: The Budget Analyst Report and Summary of Comments Received at
Following Interested Persons Meetings

A handwritten signature in black ink, likely belonging to John St. Croix, is written over the "Re:" line and extends into the right margin.

On June 5, 2012, the Budget Analyst issued a report comparing the laws of the City and County of San Francisco and the City of Los Angeles to Supervisor Campos. The report examined four policy areas: campaign finance, enforcement and education, lobbying, and transparency. On December 4 and 10, 2012, and February 27, 2013, staff convened interested persons meetings to obtain public feedback on the policy options described in the Budget Analyst's report. (Five persons signed the attendance sheet on December 4, eight on December 10, and ten on February 27; not all attendees sign in.) This memorandum summarizes the comments received at the meetings and offers some recommendations from staff. Attached to this memorandum are written comments that staff received regarding the Budget Analyst's report. Based on direction from the Commission, staff expects in upcoming meetings to present legislative or regulatory proposals to address some of the concerns raised.

The notices of the IP meetings listed seven topics of discussion, generally in the order presented in the Budget Analyst's report.

1. Should San Francisco increase the period during which contractors, subcontractors, principals, etc. may not contribute to political campaigns from six months to twelve months, and prohibit contractors, subcontractors, principals, etc. from fundraising on behalf of candidates?

In Los Angeles, contractors, including their principals and subcontractors, cannot make a contribution to, or fundraise for, a candidate who sits on a City body that will be considering or approved their contract within a 12-month period, if the contract is worth \$100,000 or more. In San Francisco, a contractor, its principals and named subcontractors, may not make such a contribution during the period of negotiations or up to six months after a contract is approved, if the contract is worth \$50,000 or more. See San Francisco Campaign and Governmental Conduct Code ("C&GC Code") section 1.126.

The following comments were received at the IP meetings:

- The law should apply section 1.126's prohibitions to persons seeking permits from the Planning Department, the Board of Appeals or the Department of Building Inspection (but should not apply to applicants for permits regarding primary residences, small businesses or over-the-counter administrative requests).
- Members of boards and commissions should be barred from fundraising for or serving on finance committees of local candidates.
- The Commission should not narrow section 1.126 to exclude members of boards of directors of non-profit organizations that receive grants from the City from its application.
- Staff should inquire whether Los Angeles extends the ban to those who sit on charitable boards, and whether Los Angeles applies its contribution ban to public employee unions whose contracts must be approved by its Board of Supervisors.
- The length of the ban should not be extended to one year after contract approval because of potential 1st Amendment concerns.
- The Commission must tackle the issue of compiling lists of who can give to specific candidates during which periods. Los Angeles requires prospective contractors to disclose when they are seeking contracts from the City to the Los Angeles Ethics Commission ("LA Ethics"), but LA Ethics does not post that information online. LA Ethics also requires contributors to affirm to the committees to which they're contributing that they are not prohibited from contributing. Committees must provide such documents during audits conducted by LA Ethics. In Los Angeles, contractors who violate the law are barred from seeking city contracts for a period of up to four years. San Francisco should explore using an excel document to capture information about who is barred from contributing under the law.

Staff's comments:

Staff believes that section 1.126 warrants further review and action by the Commission. At its meeting on October 18, 2010, the Commission took several actions to amend section 1.126, including the following: adding or striking language to clarify that section 1.126 does not apply to grants or contracts with nonprofit organizations and other governmental agencies or constitutional corporations; that section 1.126 applies only to City elected officials and their boards or commissions, not to State agencies consisting of members appointed by City elected officials; and that section 1.126 applies only to contracts that are worth at least \$100,000, instead of \$50,000. Unfortunately, the draft amendments, part of a legislative package, did not receive substantial support at the Board of Supervisors.

For the reasons articulated in staff's October 6, 2010 memo, staff continues to believe that section 1.126 should apply only to contracts that are worth at least \$100,000. The Board of Supervisors normally is required to approve contracts worth \$10 million or more or with terms of

ten years or longer. Contracts worth under \$100,000 rarely require approval by elected officials. Alternatively, the Commission could consider amending section 1.126 so that it tracks Charter section 9.118, which lays out when Board approval of contracts and leases is necessary.¹

In addition, staff believes that it is worth exploring whether section 1.126 should extend to cover parties who seek land use-related approvals that exceed a certain threshold monetary amount, with the aim of targeting larger development projects. As well, it is worth exploring how to make information regarding who is subject to the contribution ban more accessible – currently, elected officers file reports with the Ethics Commission only when they have approved a contract; parties to contracts under negotiation are not disclosed at any centralized location. Next, to comply with the law, candidates have to search through all 1.126 forms filed within the past six months every time they receive a contribution. This is inefficient and impractical. Even though Commission staff scan paper 1.126 forms into electronic format, the scanned images cannot be searched.

At the IP meetings, a request was made to convert the SFEC Form 126 – Notification of Contract Approval to an electronic format, such as using Excel documents submitted via e-mail, to provide more accessible data. Commission staff is committed to converting paper disclosure forms to electronic format if the electronic conversion:

- a) Is cost effective to develop;
- b) Reduces the administrative cost to process the form;
- c) Provides more timely and accurate information to the public;
- d) Preserves the document in an open-data format; and
- e) Includes a free submission method for the filer.

Unlike FPFC campaign finance forms that are used statewide, local SFEC forms are unique to San Francisco and expensive to develop into electronic filing systems. The Commission has reduced the cost of developing electronic filing systems by sharing the costs with other cities and counties that use the same form and filing software. Commission staff has discussed building an SFEC Form 126 system with Netfile, but building a custom solution for a single form in San Francisco is not cost effective at this time. Netfile's electronic filing systems include critical components needed to create a reliable electronic submission process, including:

- a) Data entry software that the City can provide to users free of charge;
- b) Filings are stored in an open data format;
- c) Reliable and verifiable submission process and form validation;
- d) Electronic signatures;
- e) Automated filing management and reporting systems for staff; and
- f) Public access web sites to download filings and data.

¹ Under Charter section 9.118, contracts that are worth \$1 million or more in revenues to the City, or that have terms in excess of 10 years, or that require anticipated expenditures of \$10 million by the City, are generally subject to approval by the Board of Supervisors.

Staff has explored a variety of alternative lower-cost options to convert local SFEC forms to electronic format, including the City's SmartPDF program and spreadsheets, such as Microsoft Excel. These solutions lack some of the necessary components to create an effective e-filing system. For example, the City's SmartPDF program cannot accept electronic signatures, requiring filers to submit signed paper documents in addition to electronic documents. Microsoft Excel would require an additional investment by the Commission to support electronic signatures and the format is not supported by the Commission's existing filing management system, so the documents would need to be processed and posted manually by staff. In addition, document submission via e-mail is unreliable and not easily verifiable.

Commission staff is currently in preliminary discussions with Netfile to address the electronic filing of local SFEC forms and to develop a tool for staff to build local forms that would accommodate forms used in other cities and counties throughout California. This would reduce the development costs for custom San Francisco forms. Netfile has already developed a signature verification component to its existing electronic filing system. If filers sign documents using the system, then the paper forms could be eliminated, which reduces the administrative costs to the City and filer. Commission staff believes that it is better to develop a solution that fully addresses all of the issues with electronic filing, rather than using temporary fixes that create new administrative burdens for the filer and the City.

Until a more cost-effective local SFEC form solution is available, perhaps one way to ensure that those subject to the ban are not making campaign contributions is to require donors to certify to campaign committees that they are not subject to the ban in section 1.126 – like LA, such certifications would be subject to disclosure in any audit or investigation of the committee. While the law could be amended to require would-be contractors to disclose information regarding their principal officers in responses to Requests for Proposals or Qualifications to the departments to which they are seeking contracts, staff is uncertain that such information would be readily accessible to the public without the devotion of significant staff resources.

2. Should San Francisco explicitly prohibit any political contributions from registered lobbyists?

According to the Budget Analyst's report, in Los Angeles, lobbyists cannot make contributions to City officers whose office they are registered to lobby, or to candidates for the office that they are registered to lobby. Los Angeles Charter section 470(c)(11) also prohibits any elective City officer or candidate (or any of his or her City committees) from soliciting or accepting any contribution from any lobbyist or lobbying firm registered to lobby the office for which the candidate is seeking election, or the current City office, commission, department or agency of the candidate or officer. San Francisco has no such ban but all lobbyists must report contributions on a monthly basis as well as adhere to all other contribution restrictions and requirements. (A state lobbyist may not contribute to a state officeholder's or candidate's committee if the lobbyist is registered to lobby the agency of the elected officer or the agency to which the candidate is seeking election. The lobbyist also may not contribute to a local committee controlled by any such state candidate. (Cal. Gov't Code § 85702; FPPC Reg. 18572.))

The following comments were received at the IP meetings:

- San Francisco should bar campaign contributions from registered lobbyists to the officials that they lobby because it's pay-to-play politics, it's influence peddling, and it undermines the public's confidence in local government.
- San Francisco should not bar such contributions as long as they are promptly reported, as is currently the case.
- Should there be any contribution limits on lobbyists who wish to contribute to either candidate-controlled ballot measure or general purpose committees?
- The City should ban campaign consultants from making political contributions.
- There should be no contribution ban – one cannot buy influence for \$500.
- The real problem is unregistered lobbyists who influence decisions; lobbyists who register voluntarily are not the problem.
- It is a common-sense decision and best practice to ban contributions from lobbyists, as the state has done.
- There should be no pay-to-play politics; there should be a ban on lobbyist contributions, and there should be no bundling and no fundraising by lobbyists.
- Regarding behested payments, there is nothing that bans the non-profit recipient from giving money to campaigns. There is a failure to see how money flows.
- In Los Angeles, those who provide advice behind the scenes must disclose (two other persons disputed this claim).
- There are too many exceptions to the Lobbyist Ordinance.
- Attorneys should be treated as lobbyists; in Los Angeles, there is an exception for attorneys only with respect to litigation (but only the state may regulate the practice of law, and lobbying is not the practice of law).²
- Public officials should also disclose when they are subject lobbying efforts.
- There should be a separation between commissioners and those seeking public office; no City employee should sit on a commission because of conflicts.
- The Commission needs the rough and tumble of politics to inform its members – perhaps a political advisory body should be established.
- Land use permit seekers should not be allowed to bundle contributions.

² Under section 2.105(d)(1)(C) of the City's Lobbyist Ordinance, communications by a "person performing a duty or service that can be performed only by an attorney, an architect, or a professional engineer licensed to practice in the State of California, including any communication by an attorney in connection with litigation involving the City and County or a claim filed pursuant to Administrative Code Section 10.20-1 et seq." are not contacts that require the person to register as a lobbyist. Recently, Supervisor Chiu and City Attorney Herrera introduced legislation to modify the exception to the term "contact," such that the exception would apply to an "attorney communicating on behalf of a party or potential party in connection with potential or actual litigation involving the City and County or a claim filed pursuant to Administrative Code Section 10.20-1 et seq."

Staff's comments:

Staff spoke with LA Ethics staff and reviewed the laws in Los Angeles governing lobbyists. The prohibition in the Los Angeles Charter does not prevent lobbyists from delivering contributions as an intermediary or at the behest of another person. The prohibition in the Los Angeles Charter also does not prevent a lobbyist from contributing to a candidate or local City officer before the lobbyist or firm registers to lobby the office the candidate is seeking or the candidate's current office.

Lobbyists in Los Angeles are permitted to participate in fundraising activities for City officeholders or candidates for elective City office. LA Ethics staff stated that their City Attorney has advised that limiting lobbyists from participating in fundraising activities could create constitutional issues. Fundraising activities must be disclosed on the lobbyists' quarterly reports. Lobbyists in LA are also permitted to produce, pay for, mail, or otherwise distribute written political fundraising solicitations for any controlled committee of an elective City officer or candidate. These fundraising solicitations must be disclosed on the lobbyists' quarterly reports.

In San Francisco, all registered lobbyists are required to disclose all contributions of \$100 or more in their monthly disclosure filings (excluding contributions to general purpose committees).³ From 2010 to 2012, lobbyists in SF reported \$614,175 in contributions, which was approximately 1.89% percent of all contributions reported (excluding contributions to general purpose committees). During the same period, lobbyists reported that their clients contributed \$20,459 (excluding contributions to general purpose committees). From 2010 to 2012, lobbyists in Los Angeles reported a total of \$763,664.36 in political contributions mostly to local elective officers and candidates and many of which were delivered on behalf of or as an intermediary for others.

The Commission could consider several amendments to the Lobbyist Ordinance, such as banning contributions from lobbyists to City elective officers whom they lobby, and requiring an additional disclosure of fundraising activity, which Los Angeles defines as "soliciting a contribution or hosting or sponsoring a fundraising event or hiring a fundraiser or contractor to conduct any event designed primarily for political fundraising at which contributions for an elective City officer, candidate for elective City office, or any of his or her controlled committees are solicited, delivered or made." (See LA Municipal Code section 48.02.) The Commission could also consider requiring lobbyists to disclose written fundraising solicitations.⁴ However,

³ Section 2.110 (c)(8) of the Lobbyist Ordinance required a lobbyist to disclose "All political contributions of \$100 or more made or delivered by the lobbyist or the lobbyist's employer, or made by a client at the behest of the lobbyist or the lobbyist's employer during the reporting period to an officer of the City and County, a candidate for such office, a committee controlled by such officer or candidate, or a committee primarily formed to support or oppose such officer or candidate, or any committee primarily formed to support or oppose a ballot measure to be voted on only in San Francisco. This report shall include such political contributions arranged by the lobbyist, or for which the lobbyist acted as an agent or intermediary."

⁴ The Chiu-Herrera legislation would require lobbyists to retain "copies of all invitations sent by the lobbyist for fundraising events for an officer of the City and County, a candidate for such office, a committee controlled by such

because disclosures pursuant to the Lobbyist Ordinance are done electronically, the Commission must consider implementation costs associated with changes to the electronic filing system.

Separately, Los Angeles City Charter section 501(d)(2) prohibits anyone required to be registered as a lobbyist to be appointed to a commission whose members are required to file financial disclosure statements pursuant to the California Political Reform Act. Staff is not certain that this is necessary in San Francisco where the compensated advocacy law prohibits any officer from receiving any compensation to communicate in any manner on behalf of any other person with any officer or employee of the City with the intent to influence a governmental decision. See SF C&GCC § 3.224.

3. Should San Francisco increase the frequency with which candidates must report contributions and spending?

According to the Budget Analyst report, Los Angeles requires candidates to file 12 reports leading up to and including the primary and general election, whereas San Francisco only requires four reports leading up to and including the general election. However, the report does not explain that in a single election cycle, Los Angeles has both primary and general elections, whereas San Francisco has a single non-partisan election. In addition, in concluding that Los Angeles requires the filing of 12 reports, the Budget Analyst's report included reports for periods that occur *before* the calendar year of the primary and general elections, whereas in counting the four reports required in San Francisco, the Budget Analyst included only reports that cover the calendar year in which the election is held. When focusing on similar time-frames, there are only two reports that Los Angeles requires that San Francisco does not: a third pre-election report before any election; and, before a March primary, a quarterly report that covers through September 30 of the prior year.

Based on recently enacted state legislation, all committees that reach \$1,000 in activity will be required to file 24-hour contribution and independent expenditure reports during the 90 days – instead of 16 days – before an election. (See Assembly Bill No. 481, approved and filed September 24, 2012.) Under this recent change in state law, many local candidates will likely be filing many more reports that previously required in either Los Angeles or San Francisco.

The following comments were received at the IP meetings:

- San Francisco should add a quarterly report between January and June. (Under existing law, committees must file semi-annual reports on January 31 and July 31.)
- There is already a lot of reporting. But if a candidate has a lot of activity in the early part of an election year, and if such activities were required to be reported, it may influence whether other candidates decide to run for office. For example, quarterly reports may help potential candidates assess the field of candidates who have already started their fundraising efforts.

officer or candidate, or a committee primarily formed to support or oppose such officer or candidate, or any committee primarily formed to support or oppose a ballot measure to be voted on only in San Francisco."

- There should be an extra pre-election period shortly after the August filing deadline so the public can learn more about candidates' supporters and contributors.
- With respect to supplemental disclosures – once a spending ceiling is lifted in San Francisco, no more disclosures are required.
- There should be information available regarding payees – don't just rely on 496s.
- The state is looking at legislation: to change semi-annual filings to quarterly or monthly (SB 3); pre-election reports – eliminating the 45-day report and requiring only a 12-day report; increasing reporting thresholds for contributions from \$100 to \$250 (AB 45), and for committees from \$1,000 to \$2000 (AB800). Thus, the Commission should pause to consider possible changes in state law before changing local reporting requirements, which may take place in 2015.

Staff's comments:

Staff recommends monitoring developments at the state level before deciding to require additional campaign disclosure reports at different intervals or thresholds.

4. Should San Francisco increase the personal contribution limits in order to offset the influence of “unregulated independent expenditures” on City elections?

In Los Angeles, the current contribution limit from any person is \$700 per election to a City Council candidate and \$1,300 per election to a candidate for Mayor, City Attorney or Controller. In San Francisco, the current contribution from any person is \$500 per candidate for City elective office.⁵ Both Los Angeles and San Francisco have aggregate contribution limits.

The following comments were received at the IP meetings:

- There should not be a change in the \$500 contribution limit.
- On contributions, San Francisco could follow Los Angeles' approach with respect to establishing aggregate limits by increasing the cumulative amount to 2 times \$500 per City elective office appearing on the ballot, but perhaps not for Community College Board and Board of Education elections.
- For ranked choice elections – the multiplier should be three times \$500 per City elective office appearing on the ballot, but should be limited to the specific office. For Community College Board and Board of Education races, the maximum amount of contributions from any person to all candidates should be the number of offices up for election times \$500 with no multiplier.

⁵ The \$500 per person contribution limit has been in effect since before the year 1983, when voters approved Proposition N; in 2005, the Commission voted to re-enact the \$500 limit. In San Diego, the current contribution limit in any single election from any individual is \$500 to a candidate running for a City Council district office and \$1,000 to a candidate running for Mayor or City Attorney. See San Diego Muni Code §27.2935.

- Why should the same \$500 limit apply to City-wide office elections as to district-wide elections? A City-wide office is 11 times the size of a district office, and it costs more to run for City-wide office. San Francisco should look at Los Angeles and try to stem the influence of independent expenditures by increasing or adjusting the per person contribution limits for City-wide offices.
- There should be no enforcement against small committees with less than \$1,000 in activity.
- Ethics should not propose an increase in contribution limits until the issue has been publicly and thoroughly vetted.

Staff's comments:

In October 2011, the Commission approved language to CFRO section 1.114(a) to clarify that, in accordance with the Charter, the Commission must adjust limits according to changes in the Consumer Price Index. Under the proposal, the adjustments would be automatic – with the contribution limit rounded to the nearest hundred dollars, using a baseline of February 2012, provided that the Commission ratifies any changes. Unfortunately, this proposal, which was part of a package of CFRO amendments that would have also consolidated disclosure and disclaimer requirements, did not receive support at the Board of Supervisors. Staff recommends that the Commission either consider adjusting the contribution level for inflation, for some if not all the City elective offices, or revive the proposal that it approved in 2011.

In addition, staff recommends that the Commission consider possible changes to the aggregate contribution limits. In Los Angeles, the cumulative limit from any person to all candidates is \$700 multiplied by the number of City Council offices appearing on the ballot at the election plus \$1,300 multiplied by the number of City-wide offices appearing on the ballot at that election, but no less than two times the limit on contributions to City Council candidates in a single election. For the 2013 election, three City-wide offices and eight City Council offices are up for election; thus, the cumulative contribution limit that any person may make is \$9,500 ($\$700 \times 8 + \$1,300 \times 3$).

In San Francisco, CFRO section 1.114(a)(2) provides that no person may make any campaign contribution that will cause the *total* amount contributed by that person to all candidates in an election to exceed \$500 multiplied by the number of City elective offices to be voted on at that election. In 2011, staff recommended and the Commission approved deleting this provision because it brought about incongruous results. In 2011, three City elective offices were up for election, all of them City-wide offices – as of August 8, 2011, 36 candidates declared for Mayor, five declared for District Attorney, and seven declared for Sheriff. Thus, at least 48 candidates were seeking City-wide elective office.⁶ But because of the limitation in section 1.114(a)(2), an individual may contribute a *total* of 3 times \$500, or \$1,500, to all candidates combined. Candidates had expressed to staff that it was difficult for some of them to raise funds because of the limitation. In contrast, for the November 2010, where five district supervisor seats and eight City-wide offices (including three on the Board of Education and three on the Community

⁶ As of August 12, 2011, 25 candidates had qualified to be on the ballot in November 2011.

College Board) were up for election and a total of 63 candidates ran for office, an individual was able to contribute up to 13 times \$500, or \$6,500. The current aggregate contribution limit in section 1.114(a)(2) is also incongruous because it predates the City's adoption of ranked-choice voting, an election system that explicitly contemplates that many voters would support multiple candidates for a single office.

At the Interested Persons meetings, it was suggested that the Commission consider changes to the aggregate contribution limit such that more funds are available to candidates who run in ranked-choice elections. For example, a multiplier of three should be added to such elections; no changes should apply to Community College Board or Board of Education races, where the candidates who receive the most votes in the race win. Under this scenario, for the three City-wide offices and the D4 Board of Supervisors seat up for election in November 2013, the most any person may contribute to all candidates would be $4 \times 3 \times \$500$, or \$6,000, rather than $4 \times \$500$, or \$2,000.

5. Should San Francisco reduce the reporting requirement threshold from \$5,000 to \$1,000 for independent expenditures by committees or persons on behalf of or against a candidate or measure?

State law requires the supplemental reporting of independent expenditures when the expenditures reach \$1,000 or more for a candidate or measure during any reporting period and any time during the 90-day period immediately preceding an election. Los Angeles additionally requires notification within 24 hours, on each occasion that an independent expenditure or member communication reaches \$1,000 or more regarding a candidate or measure.

Except for reporting requirements during the petition circulation period, San Francisco does not have additional reporting requirements regarding expenditures related to ballot measures. However, San Francisco requires third parties to report spending on candidates as follows:

- a. In races where there is at least one publicly financed candidate or where at least one candidate has accepted the voluntary expenditure ceiling, third parties must file notices within 24 hours of reaching \$5,000 per candidate in independent expenditures, member communications or electioneering communications;
- b. Any person who pays for a mass mailing that costs at least \$1,000 and that is an independent expenditure regarding one or more candidates must file a report within five business days of the mailing or, if the date of the mailing occurs within the last 16 days before an election, within 48 hours of the date of the mailing;
- c. Any person who pays for an electioneering communication that costs at least \$1,000 must file a report within 48 hours of each disclosure date; and
- d. Any person who pays for a persuasion poll must file a report within 48 hours of certain milestones.

The following comments were received at the IP meetings:

- Yes, the reporting threshold should be lowered to \$1,000. During an election, one could buy online ads – 10,000 impressions for \$900 for distribution citywide. For

\$1,000, one could blanket coverage in a supervisorial district; for \$5,000, everyone could pay for 12 separate automatic – or “robo” – calls over an entire district.

- There should be information in the forms regarding vendors.
- The \$5,000 reporting thresholds were put there for a reason, so there should be no change.

Staff's comments:

As with respect to Topic 3, staff recommends monitoring developments at the state level before deciding to require additional campaign disclosure reports at different intervals or thresholds.

6. Should San Francisco reduce the amount of time for which extensions of credit to a campaign are reclassified as contributions from the current six months to one month?

In Los Angeles, extensions of credit, other than loans, for a period of more than 90 days (previously, 30 days) are subject to contribution limits. In San Francisco, a candidate committee that accepts goods or services on credit must pay for such accrued expenses in full within 180 calendar days to avoid reclassification as a contribution. Once any such expenses are reclassified as contributions, local contribution limits would then apply.

The following comments were received at the IP meetings:

- A candidate with debt must raise money – if you have automatic conversion, there will be a violation, and at the \$500 contribution limit, the candidate will reach this violation sooner. Los Angeles has higher contribution limits that would make this “automatic conversion” into a violation less likely. Thus, do not change the law.
- Try changing the time period to 90 days – vendors want to be paid.
- The accrued debt law should also apply to general purpose recipient committees and ballot measure committees. Some of these committees are financed by loans.
- There are some vertically integrated campaign operations that provide bundling services to campaigns and that may require shorter timeframes for reclassifying unpaid expenses as contributions.

Staff's comments:

Staff does not recommend a change in the law at this time. In discussions with LA Ethics, it was revealed that LA Ethics changed the conversion period from 30 days to 90 days because 30 days was deemed too short and did not work. Staff also did not find any empirical evidence to show that a 90-day period would be any more effective than a 180-day period.

7. What changes, if any, should San Francisco adopt to its enforcement policies so that its results more closely match the results in Los Angeles?

The Budget Analyst states that investigations into ethics violations result in significantly different outcomes in San Francisco and Los Angeles, with San Francisco dismissing 76 percent

of its cases compared to 19 percent in Los Angeles, and Los Angeles levying higher average fines of \$7,746 compared to \$6,088 in San Francisco over the seven-year period ending in November 2011. In discussions with LA Ethics, staff has learned that LA Ethics includes amounts received pursuant to its infractions and disgorgements policies. Also, LA Ethics staff performs a preliminary evaluation of any complaint to determine whether sufficient evidence exists to move a matter forward to a formal investigation before it deems a complaint a "complaint." San Francisco recently adopted preliminary evaluation steps similar to those taken in Los Angeles. San Francisco has also begun to review campaign reports to identify excess contributions.

The following comments were received at the IP meetings:

- When an investigation is over, San Diego Ethics Commission makes its files available to the public, but not Los Angeles or San Francisco.
- Confidentiality has been problematic for some time now – there needs to be more transparency. Only confidential witnesses and unique investigatory methods should be confidential; but a change to the Charter is required if the City is to change the way it handles the confidentiality of its investigations.
- San Francisco should budget for an independent audit of Ethics' enforcement policies.

Staff's comments:

The Budget Analyst report found that, in the period from October 18, 2004 through November 14, 2011, Los Angeles heard 354 enforcement cases compared to San Francisco's rate of 137 cases. It further stated that San Francisco dismissed 76% of cases compared to Los Angeles' dismissal rate of 19%. The Budget Analyst report also outlined that Los Angeles issued higher fines and approved higher settlement amounts than San Francisco. Los Angeles had an average fine/settlement amount of \$7,746 compared to San Francisco's average of \$6,088, with San Francisco's settlement amounts most frequently being less than \$1,000.

Addressing the difference in the number of complaints between the two agencies, staff reviewed the number and type of complaints LA Ethics brought as enforcement actions to determine why there was such a huge difference. As of the date of this writing, LA Ethics initiated a total of 496 formal complaints since 1993.⁷ Of these complaints, 203 were "excess contribution" cases. This means that LA had 293 cases for purposes of comparison. Approximately 41% of all LA Ethics' enforcement matters were for excess contributions. According to LA enforcement staff, LA Ethics handles excess contribution violations as enforcement matters. In addition, LA Ethics initiates an enforcement action against the individual contributor who contributed in excess of the limit, as well as an enforcement action against the committee that accepted the excess contribution. LA Ethics enforcement staff stated that by holding both the contributor and committee accountable in an enforcement action, there has been greater compliance and vigilance by committees to ensure that contribution limits are not exceeded. LA Ethics also employs a mechanism to allow a committee to cure the violation prior to initiating an enforcement action. In addition, a contributor who is a first-time offender of the contribution

⁷ As of the same date, since 1995, San Francisco has initiated 508 formal complaints.

limit will not incur a penalty if he or she stipulates to the violation. To date, San Francisco has handled excess contributions as forfeitures – outside of its enforcement processes – that require the offending committee (but not yet the contributor) to pay the excess contribution to the City's general fund. However, staff is ready to make recommendations to move these matters into enforcement. In addition, staff proposes moving violations of several other laws into enforcement, including the ban on contributions from corporations to candidate committees, missing contributor information, and violations of contribution limits. Staff is currently working on set of guidelines for the Commission to consider.

With respect to the difference in the rate of dismissals between LA Ethics and Ethics, at a Board of Supervisors Rules Committee hearing, the Budget Analyst representative indicated that he looked only at information that was available on LA Ethics' website and did not look at any information as to how LA Ethics accepts or initiates a formal complaint. In conversations with LA Ethics staff, staff learned that LA Ethics employs a rigorous "preliminary review" process that occurs prior to an allegation becoming a formal complaint. LA Ethics' enforcement staff also noted that the dismissal rate presented in the Budget Analyst report does not reflect the number of cases that are dismissed in that preliminary review process because its confidentiality provisions prohibit the disclosure of such information to anyone. LA Ethics stated that the dismissal rate reflected in the Budget Analyst report would only be representative of those cases in which a complaint was brought to a hearing and dismissed by the Los Angeles Commission. In contrast, San Francisco historically initiated a formal complaint prior to conducting a preliminary review. Since 2011, however, staff has conducted a much more extensive preliminary review to ensure that formal complaints are only brought forward based on very credible information. In addition, LA Ethics does not handle alleged public records request violations as enforcement matters, as San Francisco does – such complaints have generally resulted in dismissals for various reasons. The Ethics Commission has already completed the process to address public records complaints in a different manner, outside of the regular enforcement regulations. Given this information, it is not possible to determine that actual percentage of dismissals by LA Ethics.

With respect to the settlement and fine amounts, in both Los Angeles and San Francisco, settlements and administrative penalty amounts are ultimately determined by the respective Commissions. Both agencies look at the totality of all the factors of a complaint before coming to a proposed settlement amount. Staff does not believe that establishing a fixed fine structure that covers every violation would be effective; however, staff is ready to propose establishing more concrete guidelines as to settlement and penalty amounts regarding some violations – this would allow respondents to have a more reasonable idea of their potential liability. Staff is currently working on set of guidelines for the Commission to consider.

Additional comments and remarks:

- *Acceptance of contributions on City premises*

Regarding the acceptance of contributions in City Hall or other City-owned buildings, San Francisco Campaign and Governmental Conduct Code section 3.230 prohibits a City officer or employee from participating in political activities of any kind while in uniform, during working hours, or on City premises, which means the law already precludes the practice; however, the

law could be made more explicit by banning the making or receipt of political contributions in City Hall or any City-owned property.⁸ Under state law, no person may receive or personally deliver or attempt to deliver a contribution in the State Capitol, in any state office building. See CA Gov't Code § 84309. In Los Angeles, Municipal Code section 49.7.11(B)(2) states the following:

A person shall not receive, personally deliver, or attempt to personally deliver a contribution in City Hall, another City office building, or an office for which the City pays the majority of the rent. This prohibition does not apply to the following:

a. City property that is rented by a member of the public, unless the lease or rental agreement expressly incorporates this prohibition.

b. A contribution that is received by mail, if it is forwarded to the candidate, the candidate's campaign treasurer, or the candidate's controlled committee within seven working days of its receipt.

- *Prohibiting City Commissioners from Fundraising*

In its February 27, 2013 letter, the Friends of Ethics ("FOEs") states, "Los Angeles prohibits commissioners from fundraising for other candidates. In San Francisco, city commissioners are the lifeblood of pay-to-pay style politics as donors cultivate those contacts for their own interests." In Los Angeles, a member of a City board or commission who is required to file a Statement of Economic Interests, or a general manager of a City department, cannot solicit, direct, or receive a contribution from a person who has or, in the preceding 12 months had, a matter involving City action pending before the board or commission member or general manager. See Los Angeles Campaign Finance Ordinance ("LA CFO") § 49.7.11(C)(1). Nor may such a person engage in prohibited fundraising on behalf of an elected City officer, a candidate for elected City office, or a City controlled committee. See LA CFO § 49.7.11(C)(2)⁹ This prohibition does not apply to members of City boards or commissions or general managers who are engaged in fundraising on behalf of their own candidacies for elected office. (*Ibid.*) As in San Francisco, except for members of the Ethics Commission and its department head, there does not appear to be any law that specifically bars commissioners and department heads from making direct contributions to elected City officers, a candidate for City office, or a City controlled committee. See Los Angeles Charter § 700(d).

In San Francisco, there is no specific prohibition on commission and board members from fundraising for local candidates. However, San Francisco has incorporated into local law the state prohibition that members of appointed boards and commissions may not solicit contributions in excess of \$250 from persons who are parties to, or participants in, certain proceedings pending before them, and from making decisions affecting a source of campaign contributions of more than \$250. (See CA Gov't Code § 84308.)

⁸ The definition of "City premises" in section 3.230(c) specifically excludes City-owned property that is made available to the public and can be used for political purposes.

⁹ A "City controlled committee" is a committee created for City purposes and controlled by an elected City officer or a candidate for elected City office. LA CFO § 49.7.2.C.

- Right of Citizens to Bring Civil Actions

The FOEs letter states that the Budget Analyst report found that Los Angeles “allows private citizen suits to enforce penalties. San Francisco does not.” This is not true. The Budget Analyst report, in the “Enforcement and Education” section on page 6, states “in Los Angeles, penalties can also be imposed for civil actions brought by citizens independent of an Ethics Commission investigation. In San Francisco, penalties can only be imposed as the result of Ethics Commission or court proceedings.” Staff reviewed the enforcement provisions for Los Angeles and San Francisco to compare the accuracy of the Budget Analyst’s finding regarding civil enforcement. In both Los Angeles and San Francisco, there are several enforcement provisions.

- *Civil Actions Regarding Campaign Finance Violations*

Los Angeles provides that a resident may bring a civil action against any person who is subject to the LA CFO, provided that the resident first files a request with the LA Ethics to commence an action. LA Ethics must respond within 40 days notifying the resident if it intends to file a civil action. If LA Ethics does commence a civil action, no civil action may be filed by any resident. (See LA CFO § 49.7.38(B).)

San Francisco provides that a voter may bring a civil action to enjoin or compel compliance with Campaign Finance Reform Ordinance provided that the voter first notifies the City Attorney. No voter may commence a civil action if either the Ethics Commission has issued a finding of probable cause or the City or District Attorney have already commenced a civil or criminal action, or if another voter has already filed a civil action. (See C&GC Code § 1.168(b).)

In both jurisdictions, a private citizen may commence a civil action alleging a violation of campaign finance laws. Both jurisdictions require that notice be provided to a city agency to initiate an action, and both jurisdictions limit the right of a resident or voter to pursue a civil action if the municipality has already commenced one.

- *Civil Actions Regarding Conflicts of Interest*

Los Angeles provides that any resident may bring a civil action against any person subject to Los Angeles’ Governmental Ethics Ordinance (“LA GEO”) provided that the resident first makes a request to the Ethics Commission to commence a civil action. LA Ethics has 40 days to respond to indicate if it will commence a civil action. If LA Ethics chooses to commence a civil action, then the resident is precluded from commencing the action. (See LA GEO § 49.5.19(B).)

In San Francisco, a resident may commence a civil action to enjoin or compel compliance with a conflict of interest of governmental ethics law provided that the resident notifies the City Attorney of the intent to file a civil action. The City Attorney must notify the resident within 120 days of receipt of the notice whether or not it will commence the civil action. No resident may file a civil action if the Ethics Commission has made a finding of probable cause, the City Attorney commences a civil action, the District Attorney files a criminal action, or if another resident has filed a civil action.

In both jurisdictions, a private citizen may commence a civil action alleging a violation of conflict of interest or governmental ethics laws. Both jurisdictions require that notice be provided to a city agency to initiate an action, and both jurisdictions limit the right of a resident or voter to pursue a civil action if the municipality has already commenced one.

- o *Civil Actions Regarding Lobbying*

Los Angeles provides that the City Attorney may file a civil action against any individual subject to the Los Angeles Municipal Lobbying Ordinance ("LA MLO") for violations of that ordinance. There is no specific provision establishing the right of a private citizen to commence a civil action based on violation of its lobbying ordinance. (See LA MLO § 48.09(C).)

The San Francisco's Lobbyist Ordinance is similar: it empowers the City Attorney to file a civil action for violations of the Lobbyist Ordinance, with no specific provision allowing for private citizen actions. (See C&GC Code § 2.145(c).)

- o *Civil Actions Regarding Campaign Consultants*

Los Angeles has no provisions, enforcement or otherwise, that regulate the conduct of campaign consultants. San Francisco's Campaign Consultant Ordinance provides that the City Attorney may file a civil action against individuals subject to the ordinance. There is no specific provision regarding the right of a City resident to file a civil action alleging Campaign Consultant Ordinance violations.

- *Civil Grand Jury Report*

The FOEs expressed its "continued disappointment with the Ethics Commissions [sic] work to protect the public trust. [It] had hoped that the 2011 Civil Grand Jury report and [Budget Analyst report] would bring a renewed vigor and commitment to the mission of the Ethics Commission." This issue was also raised by former Ethics Commissioner Eileen Hansen at the Interested Persons meeting held on February 27, 2013. Ms. Hansen asked if the Ethics Commission had addressed the findings of the Civil Grand Jury report or considered any of its recommendations. She stated that she was troubled at the inaction and lack of attention to public feedback regarding the Civil Grand Jury report.

The Civil Grand Jury, which issued its report on June 20, 2011, made seven findings and recommendations. The Ethics Commission scheduled the matter to be discussed at its next regular meeting on July 11, 2011. At that meeting, the Executive Director proposed responses for the Commission to discuss and for the public to provide comment. The Commission discussed each of the report's seven findings and listened to the public's input. The Commission continued the matter to the next meeting so that staff could redraft a response for discussion taking into consideration the Commission's discussion and the public's comments and suggestions.

At the next meeting held on August 9, 2011, the Commission solicited the public's input prior to discussing the revised response. Following robust discussion with the Commission and the public, the Executive Director issued a response to the Civil Grand Jury report on August 12,

2011, as directed by the Commission. The response highlighted several areas identifying erroneous findings or issues that the Commission had already addressed. The response also highlighted recommendations that the Commission accepted or adopted.

Attached to this memorandum is the August 12, 2011 report from the Commission to the Honorable Katherine Feinstein about the Civil Grand Jury's findings. Also attached are status reports to the Controller's office regarding the findings.

- Cash Contributions

The Budget Analyst report noted that in Los Angeles, cash contributions are limited to \$25. State law and San Francisco allow for cash contributions that are less than \$100. Ethics staff has learned that contributions made by money orders or cashiers' checks up to \$99.99 are allowed in Los Angeles. The report correctly noted that San Francisco requires any cash contribution (including money orders or cashiers' checks) to be accompanied by written documentation from the contributor in order for the cash contribution to be matched with public funds.

- Outreach

The FOEs letter states, "Many of us have had no outreach from the Ethics Commission, including regarding the upcoming Interested Persons meeting, although the Commission directed staff to create a robust outreach for community views on the June 5, 2012 Rose Report comparing San Francisco to Los Angeles ethics policy and practices."

The public can opt to receive updates regarding the Commission's activities from a wide variety of sources. Staff's outreach efforts are ongoing and thorough, but staff is not in a position to compel public interest.

- Interested Persons List

The Interested Persons List is a mailing list that distributes press releases and meeting agenda packets, including links to all supporting documents. The public can join the Interested Persons List by completing a form available on the Commission's web site. There are over 90 subscribers to the list, including Commission staff.

- Interested Persons Meetings

Interested persons may also choose to attend Interested Persons Meetings, which in the past have covered topics such as proposals to amend the Campaign Finance Reform Ordinance, the Lobbyist Ordinance, and other laws or to upgrade the electronic filing system. Meeting notices are distributed via the Interested Persons Mailing List and on the Internet via the Commission's web site and other avenues described in the next section.

- Internet Outreach

The Commission's website publishes updates regarding the Commission's work on a variety of social networks, subscription services, and external web sites that allow the public to follow the

Commission's work without regularly checking the Commission's web site. Some of the available Internet services include:

- *Twitter*: Over 820 members of the public, organizations, and other City departments receive updates regarding the Commission's work on Twitter.
- *Facebook*: Over 280 members of the public, organizations, and other City departments receive updates regarding the Commission's work on Facebook.
- *RSS ("Really Simple Syndication") feeds*: Updates to the Commission's website are published via a web subscription method known as RSS. The public can subscribe to all new postings to the web site, or for a variety of subsections of the site including: advice letters, agendas, audits, events, education and training opportunities, gifts of travel filings, minutes, meeting recordings, news, payments made at the behest of an elected officer filings, and lobbyist disclosure report filings. RSS feeds are available for other web sites to redistribute Commission information.
- *Commission Meeting Recordings*: Since June 2009, audio recordings of Commission meetings have been published on the Commission's website. Both video and audio recordings have been available online since January 2012. Video recordings can be streamed live or retrieved from an archive.
- *Calendar of Events*: A calendar is available on the Commission's website to track important deadlines, interested persons meetings, training opportunities, events, and Commission meetings. The calendar can be viewed on the Commission's website, or the public can subscribe to the calendar and receive updates automatically from within their own calendar application or on their mobile phone.

○ *Solicited vs. Unsolicited Communications*

With the exception of unsolicited notices to the regulated community regarding upcoming filing obligations, trainings, interested persons meetings, audit selection(s), updates to the electronic filing system, and feedback for changes to laws and regulations, the Commission has traditionally taken an approach of only providing communications to the public, organizations, and media that expressly asked to be sent information and updates regarding the Commission's work. The Interested Persons List and all of the Internet subscription services currently require some action by the public to request information and updates regarding the Commission's work. Whether it is completing a form to be on a mailing list, or clicking a button or link on the web, these actions confirm that the member of the public actually wants to receive additional information and allows the public to specify which information is important to them.

At previous Commission meetings, there have been suggestions to add organizations and political clubs to the Interested Persons Mailing List that did not previously request to receive communication from the Commission as a means of increasing the Commission's outreach efforts. Increasing the Commission's outreach through unsolicited communications to organizations creates new issues such as:

- If the Commission were to add organizations, such as political clubs, to the mailing list, which organizations should the staff add to the list and how would the organizations be identified?

- Is there a risk of leaving organizations off the list such that the Commission is perceived as communicating only with a selective group of organizations which may tarnish the perception of the Commission as a non-partisan and impartial entity?
- For electronic communications, how does the Commission avoid becoming listed as a “spamming” organization by those who do not want to receive communications from the Commission?
- Is there any evidence that distributing unsolicited information regarding the Commission’s work to organizations will actually achieve the goals of increasing interest and respect for the Commission’s work?

Staff believes that unsolicited communications create risks for the Commission without evidence that they will generate new interest in the Commission’s work or increase participation at Commission meetings. As the public can increasingly follow the Commission’s activity over the Internet, it is likely that the use of the Commission’s public access room resources and in-person participation at Commission meetings will decline. Internet outreach actually allows discussion of the Commission’s activity to occur outside of Commission meetings by allowing the public to stay engaged at work or home through listening to Commission meetings on-line, receiving tailored updates regarding subjects that are of interest, or communicating on social networks outside of Commission meetings.

○ *Making Information Publicly Accessible*

The FOEs state, “Compared to ten years ago, when Ethics had a smaller staff and smaller budget, today’s commission provides less public notice of campaign and lobbying activity, places obstacles in the way of easy access to information on non-compliance with our laws, and makes less information available to the public. ...There have been no press releases on the quarterly lobbyist reports in more than seven years. There is no list of city officials who have failed to file the required public disclosures of their financial interests. Instead, the public must undertake a search name by name of every filer to find the non-filers. There is no information for contributors to educate them about the law, and no information on any Ethics activity in languages other than English....All of this represents significant steps backward from the Ethics Commission’s launch and first decade.”

The Commission has made significant advances in making disclosure reports and data more accessible to the public in the past eight years. Previously, many campaign finance statements, and all lobbyist, campaign consultant, and Statement of Economic Interests reports were only accessible in paper format and could only be viewed during regular business hours on weekdays. The Commission had a limited electronic records management system, but the information in the system was only available to the public upon request to Commission staff and was not available on-line. One campaign finance statement, Form 460, was available in electronic format. Large campaign finance datasets were only available to the public upon request and were not available on-line. Lobbyist reports were summarized and released in quarterly summary reports, but the information in the report was outdated by the time the public received it. Electronic lobbyist data did not exist and lobbyist reports could not be viewed on-line. A list of filers who submitted a Statement of Economic Interests form during the current calendar year was available on-line,

but the public could not view the content of the filings and the list was removed from the web site at the end of the year when the new list needed to be posted.

Today, the Commission offers extensive access to the Commission's internal records management systems and disclosure data. All campaign finance, campaign consultant, lobbyist, and Statements of Economic Interests filings received by the Commission are entered into the Commission's records management system and are available on the Commission's web site. Disclosure statements are either instantly made viewable on the Commission's web site through electronic filing or scanned into electronic format and posted on-line by Commission staff. All of the most frequently submitted FPPC campaign finance statements are submitted in electronic format. As of March 2013, all committees that file itemized campaign statements with the Commission are required file electronically. In addition, all electronically filed campaign finance and lobbyist filings include machine readable transaction data that can be exported into spreadsheets using the Commission's web site. In fact, the public has access to the same campaign finance transaction data reports and filing records used by the Commission staff to audit a committee.

In 2010, the Commission converted all lobbyist filings to electronic-only filings. The electronic system updates summary reports of lobbyist activity, a search engine, and an Application Programming Interface (API) on the Commission's web site within seconds of receiving a lobbyist's monthly disclosure filing. The Commission no longer publishes static quarterly lobbyist report summaries because live-updating summaries of monthly lobbyist reports are available on the Commission's web site. The practice of writing a static lobbyist quarterly summary report is obsolete.

The Commission has also partnered with the Department of Technology to integrate the Commission's campaign finance and lobbyist data with the City's new DataSF web site. The DataSF web site allows the public to "mashup" various City datasets, build charts and graphs, and access the data via an API to integrate the data into other web sites and applications. The Commission not only provides data to DataSF, but used the system to deliver dashboard reports of campaign finance activity during the November 6, 2012 election and interactive graphs in the past two public financing reports. The public is able to track candidate committee activity, ballot measure committee activity, third-party spending, public financing disbursements, and expenditure ceilings using graphs built with DataSF. Each graph provides an unprecedented level of transparency, because the system allows the public to delve into the raw data used to build the summary graph itself.

Statements of Economic Interests (SEI) are filed on paper, scanned into electronic format, and made viewable on the Commission's web site. A complete list of filers and non-filers can be downloaded from 2007 to 2013 by date range, department, or filer. The Commission's web site provides live access into the Commission's SEI records database. The assertion that the public must undertake a search by name of every filer to find the non-filers is incorrect.

Commission staff is currently developing new electronic submission practices for public finance matching funds requests to eliminate the reliance on Microsoft Excel, and to move towards a

single data entry system for both public financing forms and campaign finance statements. This change would reduce the burden on filers and administrative costs.

The Commission has never had the resources to provide translation of its materials into languages other than English. In Los Angeles, Ethic Commission documents are not provided in languages other than English as well. Los Angeles provides a link to a translation widget from Google, but automatic computer translation of languages provides inconsistent and extremely poor translation of documents. Staff believes it would be a disservice to the public to advertise Google's tool on its web site and to encourage its use when staff knows it will fail to provide accurate translations.¹⁰

Here are some statistics regarding hits on the Commission's web site:

FY 11-12: Users visited the web site 62,819 times during the year

FY 11-12: There were 188,184 "pageviews" of the web site

FY 10-11: Users visited the web site 58,086 times during the year

FY 10-11: There were 151,048 "pageviews" of the web site

FY 9-10: Users visited the web site 52,650 times during the year

FY 9-10: There were 138,846 "pageviews" of the web site

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¹⁰ Supervisor Chiu and City Attorney Herrera also recently introduced legislation that would designate the Ethics Commission as a Tier 1 department under the Language Access Ordinance, codified as Chapter 91 of the Administrative Code. Tier 1 departments are required to provide enhanced language access services, such as the use of bilingual employees, automatic translations of key documents, and preparation of an annual compliance plan. Historically, and based on at least one survey that the Commission conducted, the Commission has had no requests for language translation services (with the exception of one witness during the Mirkarimi hearing). In the rare instances where a member of the public visited the Commission and did not speak English, existing staff was able to translate – it turned out in these instances that the member of the public required the services of other departments, to which they were directed. If the Commission is designated a Tier 1 department, Netfile has estimated that it could cost an estimated \$125,000 per year if the City provided the translations and Netfile adds the new language into the existing system; approximately \$5,000 in staff costs would also be needed.





ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

August 12, 2011

The Honorable Katherine Feinstein
President Judge of the Superior Court
400 McAllister Street
Department 206
San Francisco, CA 94102

Dear Judge Feinstein:

The Ethics Commission strives to provide the best quality services possible to the people of San Francisco. To that end, it welcomes constructive criticism from a wide body of sources and thus appreciates the efforts of the Civil Grand Jury (CGJ) for suggesting potential avenues of improvement to the Commission. This letter serves as a response to the report released by the Civil Grand Jury on June 20, 2011. Each finding is addressed in turn.

Finding 1

The CGJ suggests: Recommendation 1.1) using a fixed fine structure or always applying the maximum allowable fine, and Recommendation 1.2) allowing the respondent to request a public hearing if he/she disagrees with the fine. The Commission disagrees with Recommendation 1.1; Recommendation 1.2 reflects current Commission processes that permit a respondent to seek a public hearing.

The Civil Grand Jury suggests a fixed fine structure and the Commission recognizes the appeal such a system may have. However, due to the breadth of reasons that infractions are committed, a fixed fine structure would be generally unfair as it would disallow any consideration of individual circumstances and create unintended consequences much like "zero tolerance" and "three strikes" laws. The Commission believes that the punishment should fit the crime. Under the current process, all negotiated settlement agreements and their attendant proposed fines are sent to the individual Commission members for approval. If more than one Commissioner disapproves of the proposal, it is automatically calendared for a closed-session discussion at a Commission meeting. While the Commission agrees with staff recommendations more often than not, there are times when the Commission redirects staff to further negotiations. Moreover, any respondent who cannot or will not reach a settlement agreement with staff will have his or her case heard in a closed-session probable cause hearing. At the respondent's request, this hearing is made public. After a finding of probable cause, a public hearing on the merits is scheduled. The Commission believes this system is more reasonable than the "one size fits all" approach recommended by the Civil Grand Jury.

The Commission is interested in maintaining consistency in its considerations and achieving balance in its judgments. Rather than using a fixed scheme to resolve cases, the Commission will endeavor to create a fitting set of guidelines that allow fairness, consistency but also needed flexibility.

Finding 2

The CGJ accuses the Ethics Commission of failure to enforce the City's Sunshine Ordinance, and Recommendation 2) states that Sunshine Ordinance Task Force actions should have a timely hearing. The Commission agrees with this finding and adds that it already endeavors to meet this goal.

Each referral is taken seriously and reviewed on its merits under the Ethics Commission's Legal Authority. Starting in May 2010, the Ethics Commission formulated several reforms for the handling of Sunshine referrals; it referred these to the Sunshine Ordinance Task Force in August of 2010 in order to clarify those legal obligations. The SOTF issued its response on August 1, 2011. The Ethics Commissioners will review and consider the comments from the SOTF, including comments regarding the review and hearing process, and will adopt those reforms it deems appropriate and productive in the near future.

Finding 3

The CGJ suggests that the Commission not wait for the City Attorney or District Attorney to assert jurisdiction before beginning an investigation: Recommendation 3) suggests beginning investigations immediately upon the close of the 14-day reply window. The Commission agrees with this recommendation. The Investigative Staff, however, needs some discretion in deciding which cases to prioritize based on current circumstances. Additionally, since staff resources are limited, it does not make sense to duplicate the work of other law enforcement agencies. The Commission will endeavor to respond to referrals on a timely basis.

Finding 4

The CGJ believes that the appointment of Ethics Commissioners by elected officials leads to the appearance of impropriety and Recommendation 4) suggests the addition of four Commission members appointed by non-governmental entities. The Commission is neutral on this suggestion.

The Commission believes that it is the behavior of the Commission that reflects its integrity. There is an acknowledged conflict-of-interest in the establishment of the Commission in that it is appointed by members of the elected body of government some of whom in turn provide the Commission's budget. However, the voters chose this process and the Commission is not going to second-guess their wisdom. Indeed, on one occasion the voters rejected an alternative plan to this structure. There are measures in place to address these concerns. For example, Commissioners may serve only one six-year term, reducing the likelihood that they would curry favor to ensure reappointment. They are appointed by an array of officials, not just the Mayor or the Board of Supervisors. Should the voters determine to change the composition of the Commission, the Commission would accept the voters' new choice of commissioner selection.

Finding 5

The CGJ believes that the Executive Director has too much discretion in proposing the dismissal of individual investigations and Recommendation 5) suggests that regulations be amended to require an actual discussion of each recommendation for dismissal and a vote on such recommendations. The Commission will revisit this process and will consider changing this process.

While it may appear to some people that the Executive Director is allowed to dismiss cases, this is not the case. Under the current system, Ethics staff members prepare comprehensive reports for the Commissioners regarding both proposed dismissals and complaint settlements. Commissioners all read these reports and make independent decisions regarding whether to support staff recommendations or to calendar the items for Commission meetings. If more than one Commissioner has concerns about staff recommendations, the item is calendared for closed session discussion at the next Commission meeting.

Finding 6

The CGJ states that the Ethics Commission does not have a database to track issues efficiently and Recommendation 6) suggests creating or modifying a database to track issues efficiently.

The Ethics Commission is concerned that the CGJ had some difficulty in obtaining documents from our staff and will endeavor to improve on this function. Customer service is a high priority for us. When official document requests are presented to the Commission, a single staff member is assigned to log the request, when it arrived and from whom. The log includes the name of staff responsible for responding and when the request was fulfilled. When individual staff members receive document requests, they do not always have them logged into this system and staff will be instructed to ensure that all requests for documents or information are logged properly.

Finding 7

The CGJ suggests that audio recordings of Commission meetings do not provide enough transparency and Recommendation 8) suggests that Commission meetings be televised. The Commission will explore the possibility of televising its meetings in a cost-effective way.

In conclusion, the Ethics Commission would like to recognize the value of the work of the Civil Grand Jury and offer thanks for their input into Commission functions. While the Ethics Commission does not agree with all of the CGJ's findings, it will follow through on those that will help improve services to our community.

Sincerely,

John St. Croix
Executive Director



For each recommendation below, indicate one of the four actions you have taken or plan to take in the "Action Plan" column and provide the required explanation in the "2012 Response Text" column.

CGU Year 2005-06	Report Title	Recommendation	Response Required	Action Plan	2012 Response Text
	2005-06 Continuity Report	1. The tracking document from the Controller's Office, with the addition of the CGU's findings and recommendations for 2007-2003, should be put online. As a working document, it should be updated as new information becomes available.	Office of the Controller	Recommendation Implemented	The tracking document was put online in November 2006.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	1.1. The Ethics Commissioners should establish a fixed fine structure for violations or apply the maximum allowed fine.	Ethics Commission		Due to the breadth of reasons that infractions are committed, a fine for individual circumstances and create unintended consequences much like "zero tolerance" and "three strikes" laws. Punishment should fit the crime. This reflects the Commission's long standing process—all negotiated settlement offers are sent to each Commissioner for review and approval. If more than one Commissioner is in agreement, the settlement is approved. If not, the case goes to a panel for approval. It is automatically referred for a closed-session discussion at a public hearing. In May 2010, the Commission formulated several reforms for the handling of Sunshine referrals, which it sent to the SOTF in August 2010. The SOTF responded in August 2011; since that time, both the Commission and the SOTF have been working to establish a date for a joint meeting to discuss these proposals. As of this date, the joint meeting is scheduled for April 13, 2012.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	1.2. If the respondent disagrees with the fine a request may be made for a public hearing. This will allow the commissioners to exercise discretion over the fines process.	Ethics Commission	4: not warranted	4: not warranted
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	2. All Sunshine Ordinance Task Force enforcement actions deserve a timely hearing by the Ethics Commission.	Ethics Commission	Recommendation reflects longstanding policy, thus, no	
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	3. After the 14-day window, Ethics Commission investigations should start promptly.	Ethics Commission	2	
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	4. The City Charter should be changed to add four additional commission members appointed by non-partisan community organizations and individuals such as: The League of Women Voters, the San Francisco Bar Association, the San Francisco Labor Council, The Bar Association of San Francisco, and the Dean of UC Hastings Law School.	Ethics Commission	4: not warranted	The Commission agrees with the recommendation; however, the Commission also believes that its investigative staff needs some discretion in deciding which cases to prioritize based on current circumstances. In addition, because resources are limited, it does not make sense to duplicate the work of other enforcement agencies.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	5. The commissioners should amend section VI. A in the Ethics Commission Regulations For Investigations and Enforcement Proceedings to require review and a vote on investigations recommended for dismissal.	Ethics Commission		The Commission is neutral with respect to this recommendation. The voters of San Francisco chose the process that establishes the Commission; the Commission is not going to second-guess their wisdom.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	6. The Ethics Commission staff should create or modify their database to increase search and tracking capabilities.	Ethics Commission	4: not within control of the Ethics Commission	
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	7. To maximize transparency, the San Francisco Ethics Commission should broadcast their meetings on the SF GOVTV television network.	Ethics Commission	4: not warranted	Under the current system, Ethics staff prepare comprehensive reports for the Commission regarding both proposed dismissals and complaint settlements. All Commissioners read these reports and make independent, or calendar items for discussion at Commission meetings. If more than one Commissioner Staff had been instructed to log document requests into the data system, before the issuance of the Grand Jury report.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog		Ethics Commission	1	Effective with its January 23, 2012 meeting, the Commission's meetings are televised.

SAMPLE
RESPONSE

California Penal Code Section 33.05 (b), requires the responding party to report for each recommendation of the Civil Grand Jury one of the following actions:

1. Recommendation Implemented (Indicate recommendation) (Indicate recommendation)	2. Will Be Implemented in the Future (Indicate recommendation)	3. Requires Further Analysis (Indicate recommendation) (Indicate recommendation)	4. Will Not Be Implemented, Not Warranted or Not Reasonable (Indicate recommendation)

For each recommendation below, indicate one of the four actions you have taken or plan to take in the "Action Plan" column and provide the required explanation in the "2013 Response Text" column.

Case No.	Case Title	Recommendation	Response Required	2012 Action Plan	2012 Response Text	2013 Action Plan	2013 Response Text
2008-08	San Joaquin County	1. The tracking document from the Controller's Office, with the action of the CJA's findings and recommendations, is being reviewed and the findings are being updated as new information becomes available.	Office of the Controller	Will Be Implemented in the Future	The tracking document will be put online in July 2011.	Recommendation implemented	The tracking document was put online in August 2011.
2008-11	San Francisco County	2. At San Joaquin County, Task Force enforcement actions involve a timely hearing by the Ethics Commission.	Ethics Commission	Will Be Implemented in the Future	In May 2010, the Commission forwarded several recommendations to the County Board of Supervisors, who seek to the SCIF in August 2010. The SCIF responded in August 2011, since that time, both the Commission and the SCIF have been working on the recommendations and will update these proposals. As of this date, the joint meeting is scheduled for April 13, 2012.	Recommendation implemented	The Ethics Commission selected a panel of three to review the recommendations and SCIF releases on a timely basis. These regulations took effect on January 29, 2013. The first hearings based on such regulations were held on February 25, 2013.

From: Oliver Luby <oliverluby@yahoo.com>
To: "mabel.ng@sfgov.org" <mabel.ng@sfgov.org>
cc: "garrett.chatfield@sfgov.org" <garrett.chatfield@sfgov.org>,
 "catherine.argumedo@sfgov.org" <catherine.argumedo@sfgov.org>,
 "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>

Date: Wednesday, February 27, 2013 10:29PM

Subject: my comments at today's IP meeting

Hi Mabel,

ending this per your request from earlier today, on my own time and behalf. Thanks again for holding
 this extra IP meeting on the Budget Analyst report - the extended notice was helpful. It would be great to
 see some significant study and proposed action done by Ethics regarding these and other proposals for
 achieving new reform.

Summary of my comments from today:

Audio record all future IP meetings, and post audio online, as LA Ethics has done, per need to have
 government's development of good government practices be completely transparent;
 accidentally: I will add now that people can always send you anonymous letters if they don't want to
 provide their feedback at an audio recorded event. Certain outreach efforts could also be initiated to
 anonymously solicit feedback from people with input who are afraid to go on the record, such as lobbyists
 who are aware of loopholes and unregulated or undisclosed lobbying. The feedback obtained from such
 outreach efforts should of course be published online, but the commentators could be protected that way.]

a. There are some findings from the Budget Analyst report that the Discussion Topics in
 our IP meeting notice mention which SF should adopt.

F's contractor contribution ban lasts only 6 months after contract approval; LA's last 12 months & bars
 not only contributions but fundraising as well

F has 2 pre-election filing periods for election campaigns; LA has 3

F's supplemental soft money reporting is triggered at \$5,000, doesn't apply to ballot measures, & only
 applies to candidates if at least 1 has accepted public financing or agreed to an expenditure ceiling; LA's is
 triggered at \$1,000, does apply to ballot measures, & always applies to every 90 day period before an
 election

F allows candidates 6 months to pay their debts; LA allows less time

F permits lobbyists to make campaign contributions; LA does not

b. However, for each of these reforms not in SF which SF Ethics has acknowledged LA
 has, there is a bigger story that the your Notice's Discussion Topics doesn't mention.

or the *contractor contribution ban*.

1. Despite the much lauded technology embraces of the City & County *and* Ethics' own commitment
 paperless, transparent e-filing, Ethics mgt. continues to refuse to change the 126 Contract disclosure
 forms (which are the basis for identifying who the contractor contribution ban applies to) from paper to
 electronic format;

Ethics won't even post the forms as Excel files, as it already does with certain Public Finance forms - an

Excel form would make it vastly easier to research who prohibited donors are as well facilitate compliance by campaigns & donor alike;

By maintaining the paper format, Ethics makes it more difficult to utilize the data in the forms & also facilitates private, partisan capacities with the data – when I was on staff, a law firm routinely copied the forms for the purpose of creating their own database, giving it a tool unavailable to either clients who couldn't afford them, the press, and even the government; parties without the resources to manually construct their own database are harmed by this system maintained by Ethics;

John St. Croix could on his own authority require these forms in an Excel format this very week at no cost to the City & County;

The reason Ethics requires certain public finance forms in an Excel format is because that makes utilizing the forms much easier on the Ethics audit staff; therefore, it is reasonable to assume that Ethics leadership's retention of the paper format for contract disclosure stems from a disinterest in promoting utilization of the disclosures.

#2 w/ the contractor ban. LA's campaign contractor ban has other advantages over SF's beyond those identified by the Budget Analyst report:

- a. the contractors themselves must submit the contract disclosure form when first bidding on the contract, thereby capturing the negotiating period which is also covered by the contribution ban (in SF, contributions are also prohibited during the negotiation period, but the public is left on their own to try to figure out when the period actually occurs)
- b. Contractors who violate any of the campaign finance rules related to contracting are subject to contract eligibility debarment – SF has no such procedure in the CFRO.
- c. LA's definition of contract is broader than SF's, including non-regulatory permits and land use licenses and concessions

-Regarding LA's *extra pre-election reporting period*:

The SF Ethics IP notice takes some time to explain an error in the Budget Analyst report on this issue and notes that the LA's extra period occurs after the usual 2nd Pre-election period – but when it comes to where SF needs extra disclosure, the real story is the August deadline for registering for the ballot and the 11th hour candidates who take advantage of that deadline to surprise the public with their candidacy; when candidates announce their candidacy that way, we get no disclosure of their campaign finances until the First Pre-election deadline, which is usually in early October – another pre-election deadline is needed in the middle of the current First Pre-election period to take into account the August registration deadline. [Post meeting note: State law changes may obviate the need for this suggested reform.]

-Regarding SF's *supplemental soft money disclosures*:

The IP notice omits the fact that the soft money disclosures in non-Board or Mayor contests when someone has agreed to the Expenditure Ceiling *stop* after the Ceiling is lifted; While the IP notice takes pains to note that SF's supplemental reporting also applies to member & electioneering communications & certain other activities, it doesn't require previously undisclosed contributor reporting or payee information except under limited circumstances;

[Post meeting note: Because of the need to receive copies of the actual soft money communications themselves and disclosures not provided by the Form 496, I do not think SF should rely exclusively on the new state enhancement regarding IE disclosure during the 90 period before the election.]

Regarding *the accrued debt limitations*:

SF Ethics has been on notice for some time that non-candidate campaigns, for which the debt time limit rules don't apply, are capable of concealing their donors by reporting campaign debt in advance of raising the funds to pay the debt; SF Ethics has never proposed any solutions for this problem

-Regarding LA ban on contributions from lobbyists:

LA's lobbyist laws present numerous advantages over the SF rules regarding lobbyists. Primarily, the SF law offers far less disclosure than it should, as numerous press stories about influence peddling can demonstrate. The Budget Analyst report only scrapes the surface of the benefits of LA law over SF. Other jurisdictions, including LA, San Diego, San Jose, the State, and more offer examples of reform that SF doesn't have. This is such a lengthy and detailed area, and there are so many problems with SF law, that I'm not going to outline all the issues here. I will simply state that SF Ethics has failed to monitor and utilize model laws and the reforms of comparative jurisdictions to promote both disclosure of lobbying and ethical interactions between influence peddling and government.

3. In addition to the Budget Analyst finding that the Ethics IP notice mentions, the Ethics IP notice flat out ignores numerous findings in the Budget Analyst report regarding reforms that LA has but SF lacks:

For example:

-The costs of compliance with campaign regulations count as qualified expenditures in LA (for expenditure ceiling purposes), but certain costs are not considered qualified expenditures in SF

-LA has a lower bar than SF for disclaimer requirements on robo-calls

-LA limits *all* of its local committees to a max. of \$25 for cash contributions; for any committee in SF (other than those for candidates accepting public financing), the limit is the state standard of \$99

-In LA, City Commissioners may not fundraise for candidates

-LA provides limits on the amount of contributions that candidates may accept from independent expenditure entities, as a condition of accepting public financing or agreeing to an expenditure ceiling

-LA provides a Guide for Contributors, while SF does not;

- The Budget Analyst report notes that ethics penalties in LA can be enforced by private citizen actions;

- According to the Budget Analyst report, LA explicitly provides for the removal of individuals from office if they are convicted of a misdemeanor that has a material impact on the outcome of the election;

-LA posts its stipulated settlements, decisions, and orders regarding its cases going back to 1993, while SF only posts going back to October of 2004
[Unmentioned by the Budget Analyst is that LA also posts the names of the Respondents prominently in a list, whereas you can only learn the names with the SF violators by individually opening their PDFs]

4. Enforcement -

The Enforcement program of SF Ethics has had numerous problems over years and, due to its confidentiality provisions, has largely been shielded from public oversight. As far as I am aware, the

proper justifications for investigative confidentiality are limited to protection of witnesses and unique investigatory methods [Post meeting note: Other justifications would be preserving the integrity of the investigative process during the course of the investigation, including avoiding interference and destruction of evidence]. The effect of confidentiality, especially after cases are closed, should not be to conceal government decision making from public oversight. The program and its history needs to be audited by a budgeted, independent expert authority. In addition, Charter reform should be proposed to provide for enhanced transparency and public oversight of Ethics Enforcement. Until these things happen and major reforms are put in place, SF Ethics Enforcement will remain permanently suspect in the public eye.

[Note: See San Diego ethics laws regarding closed cases, for a starting point.]

5. Contribution limits-

I do not support adopting the higher LA contribution limits detailed in the Budget Analyst report. Since last year, I noticed that the Budget Analyst reform appears to have generated some appetite for raising SF's individual contribution limits, given that LA has higher individual contribution limits. Raising contribution interests has been the fantasy of many in the election campaign business for some time. However, the Budget Analyst report's contrast between SF and LA's limits fails to take into account their relative registered voter populations, especially in conjunction with the number of donors required to reach the expenditure ceiling. The Budget Analyst does utilize the number of registered voters to contrast the expenditure ceilings between the two jurisdictions, but the contribution limits are only given a flat comparison, which is not a very robust analysis of the appropriateness of the limits.

In addition, the Budget Analyst analysis fails to take into account the larger geographic area of LA, which can result in increased communication and outreach costs for campaigns.

So, before we make the mistake again of getting carried away with incompletely vetted proposals, let's make sure that contribution limits are thoroughly studied before any proposals move even an inch from the drawing board.

Additional post meeting notes:

In addition to these reform proposals, there are number of others that have been raised by Friends of Ethics in recent years. For example:

<http://www.citireport.com/2012/10/a-primer-for-closing-%E2%80%9Csoft-money%E2%80%9D-disclosure-loopholes-in-san-francisco-2/>

Additionally, there are many model laws and current reforms existing in comparative jurisdictions which SF could model. SF Ethics should institutionalize staying on top of good government reform and comparative law throughout the country, as well as generously seek out and consider the published proposals of reform advocacy groups such as Friends of Ethics & others, and should adopt and demonstrate the very best practices that exist via a thoroughly transparent legislative development process.

I also am in agreement with Larry Bush's comments made at the meeting about the need to study problems with bundler disclosure (and Commissioners and other special sources engaging in such bundling) and the nexus between contributions, lobbying, and land use decisions.

Good luck.

Oliver Luby

IP Meeting 02/27/13

Eileen Hansen

Comments

(revised following the meeting)

Recording of Meeting

I very much appreciate the convening of this IP meeting, and I appreciate the presence of Commissioner Renne. I asked for the meeting to be recorded, both prior to the meeting and at the beginning of the meeting, but unfortunately no recording was made. In the future, I would ask that all IP meetings be recorded. When I was on the EC I found it most useful to hear directly from the public – and then to share that info with the Commission. Without a recording or official notes, it is difficult for the Commission to fully grasp the comments made, and whether they have come from the public or the regulated community. It is critical to know who is assisting the staff in their development of new proposals and the specific comments made by those in attendance.

Outreach Needed

I am a member of Friends of Ethics and we specifically asked for this third IP meeting because we were concerned with the extremely limited outreach that was done for previous meetings, resulting in very few individuals from the non-regulated community in attendance – and thus skewing the information received by staff. We did not see increased outreach for this meeting – and so FOE did its own outreach. The result was that nearly everyone who attended this IP meeting was there because of the outreach we did. Supervisor Campos, at the public hearing last year in response to the Rose Report, and the Commission itself, asked for increased outreach – and I again ask that the Commission do so in the future. When I was on the Commission and asked for increased outreach I was told to do it myself if I thought it was important. I'd like to think we've moved beyond that, but it doesn't appear so.

Requests

1) There are a number of items listed for discussion on today's agenda. However, there are also many not listed. My first request of the Commissioners and Staff is that the ENTIRE Rose Report be calendared for discussion at an upcoming Commission meeting, not just a few items. The items listed are indeed important and are those noted in the Executive Summary of the Rose Report. However, they are just the beginning and I would hate to believe that the full report is not reviewed and discussed.

The Rose Report was issued in June 2012. Why has it not been addressed except at IP meetings? I found it quite a compelling report and yet, I don't see a corresponding response from the Commission. It appears to me – and I must believe to members of the public – that the Commission has not taken it seriously.

It reminds me of the Civil Grand Jury Report in which the EC was called SF's Sleeping Watchdog. In that report, the CGJ said this: "there are a number of areas where the procedures and rules followed by the EC staff are at odds with its stated mission to practice and promote the highest standards of ethical behavior in government." For example, they cited a number of reduced fines and pointed out a fine that was reduced to just 1% of the original fine. The CGJ said the reduction of fines due to cooperation is "most irregular and vulnerable to manipulation against the public interest." There was a bit of a public buzz when the report was released, but as far as I know there was no response from the Commission.

2) Has the CGJ Report been addressed yet? Have their recommendations, including setting a fixed fine structure for violations or applying the maximum allowed fine been considered yet? If not, why not? This is troubling – and

if I was still on the EC, I would be troubled at the inaction and lack of attention to public feedback. The EC is responsible to the public and yet, when there is an opportunity to call attention to the importance of ethics issues – and you have the public's attention – you are silent.

The Rose Report highlights numerous areas where LA has stronger transparency, accountability and enforcement than SF. I'd like to believe that our cutting edge city is on the forefront of ethics reform, but this report clearly tells us it's not so. Even the State has some best practices that we don't have in SF – and FOE asked a representative from CA Common Cause to share that information with you today. We all know that ethics reform is broken at the federal level. If the City of SF can't push the envelope and help set the bar for progressive ethics reform in the country, who can? Apparently, LA can.

3) The Rose Report was limited in its scope by comparing LA and SF. It makes sense to me that the EC would want to investigate further – there are a number of areas cited by Harvey Rose that merit further research. And, there are other cities that merit research. Don't we want to do the very best we can in terms of best practices? We can learn these from other jurisdictions. When I was on the EC, I repeatedly heard that our EC couldn't do something because we were afraid of getting sued. Well, let's at least start where other jurisdictions have laws and rules in place and have not been challenged for them. Then, let's move on to being brave enough – and smart enough in our assessments – that we can carefully and strategically move ethics reform forward by testing the law. Would you be willing to do that?

It would be easy for me to go down today's agenda and say YES, of course we should increase the period during which contractors, etc. may not contribute to political campaigns; and YES, of course we should explicitly prohibit political contributions from registered lobbyists – the State of CA does; why shouldn't we? – and so on. But, that's too easy and in some ways, skates over some other critical concerns. Let's look at what's not on the agenda:

Some low-hanging fruit:

- 4) Why shouldn't we ban contributions from political appointees to those who appointed them?
- 5) Why should we allow political contributions to be exchanged inside City Hall?
- 6) Why should we allow the collecting and bundling of contributions from others?

We've seen recent incidents and the public knows these are problems, but what are we doing about them? This is how influence is carried out – and how politics and policy are made. Is there anyone in this room who doesn't believe that?

7) With just a bit of research, here's a specific example – but again, one has to be pro-active and strategic and focus on protecting the public and following the money to get this information – and then to figure out what to do about it. The following public information is available in the 2012 SF Lobbyist Activity for Political Contributions: Janan New, an active registered lobbyist and ED of the SF Apartment Association, gave her \$500 to Mike Garcia for D7 Supervisor and then gave \$35,170 to Friends and Neighbors in support of Mike Garcia. How is this possible? While there is a cap of \$500 on contributions to candidates for mayor and the BOS in SF, there is no cap on contributions to those same candidates running for the DCCC or to committees set up to support those same candidates. Doesn't this bear looking at?

8) Development is the name of the game in SF; its money drives our politics and our decisions about what kind of city we are going to live in. We are currently in a wild development boom – 90% of all CH lobbying is development-related. The city contractors contributions ban has an enormous loophole: it is nearly meaningless

without a ban on contributions from those seeking development permits. Again, some pro-active research gives us those figures. But the public shouldn't have to do that research – that is the job of the EC. Uncovering that information is what I want my EC to be engaged in. Would you agree that following the money in SF politics will give us far more information than tinkering around the edges of existing laws? There is no one but the EC to do this work; will you take it on?

Thank you, Ethics Commissioners and Staff. I appreciate your taking my comments into consideration as you proceed. I am always happy to be available should you desire more information.

Eileen Hansen
Former Ethics Commissioner



From
Larry Bush

ETHICS FEB 27, 2013

I want to take a step back in looking at the larger issue the underlies the LA approach compares to ours.

LA's laws and enforcement are focused on pay-to-play politics which they do through several features: banning lobbyist contributions, banning contractors from bundling, banning city commissioners from fundraising for candidates other than themselves, setting out a clear guide on contributor rules. These are all gates that either open or close for how money plays at city hall.

San Francisco should look at the same larger issue, not just piece off the various provisions as today's agenda does. It needs to ask what are we doing, how is money playing in our politics, and what steps should we take -- from prohibitions to much stronger disclosures.

By taking this higher level view, it allows us to consider the Mayor Ed Lee Committee for San Francisco that skirts the law by establishing a General Purpose Committee that accepts unlimited contributions as well as money from contractors because it is not a candidate committee, even though it is controlled by the mayor.

Similarly, the Commission now requires filing by committees seeking to draft a candidate, but did not act on the proposal we made that the disclosures indicate whether the donor is a city contractor or has business pending before city officials.

This is the illusion of transparency and not genuine transparency.

It allows us to consider the impact of city contractors responding to requests from city officials to make contributions to nonprofits under "behested payments" and these contributions presumably result in favorable status for the official.

Some of those involved include city contractors and in one case was a contribution of \$100,000. There is no identification that the donors are city contractors or that they obtain favorable votes on their projects.

Then I am looking at committees funded by nonprofits that do not disclose their donors, and examining whether some of this is "dark money" hidden from public view similar to the funds the FPPC is trying to track.

The Parks Alliance is my prime example with contributions to the Parks bond that exceed \$100,000 but from mystery sources. Further, they have failed to meet their reporting requirements thus deepening the mystery. We have no reports after October 21 from them -- which is of course a crucial period for campaign spending.

Finally, i am looking at how staff is unfamiliar with the real world of politics and fails to take into account how the flow of money works. A prime example is setting a \$5,000 figure for disclosing robocall expenditures, but as we in FOE know, \$1,000 is enough to flood a district election and it would all be hidden under the staff's rule that was adopted by the commission.

In my opinion, this shows that the commissioners need to seek input beyond the staff and do so actively and not simply on the basis of who shows up to speak.

I think this is the framework for a meaningful discussion of Los Angeles' policies and practices as a possible model for San Francisco.

Clearly when you get into the specifics, there are any number of gaps that San Francisco has not closed and that are being used as loopholes.

We do not prohibit contractors from bundling contributions from others, and this is precisely the power lever for City Hall influence.

We do not include those seeking development permits in our definition of contractors, yet they are the category with the largest number of City Hall contacts.

We have not established performance standards for ensuring that filed reports are audited or even posted for the public.

In the past several months, we have seen complaints filed where there has been a serious failure to provide oversight on these reports.

The Commission has not adopted a policy of filing a public charge that a violation has taken place, but relies solely on complaints being filed. If you had a system for filing a public charge as LA does, you could have taken up issues that surfaced in your review this week of Sunshine violations but which were not appropriate under the specific section of the law cited in the complaint and finding.

February 27, 2013

President Benedict Hur
Commissioner Jamieenne Studley
Commissioner Dorothy Liu
Commissioner Beverly Hayon
Commissioner Paul Renne
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 200
San Francisco, CA 94102

President Hur and Members of the Commission:

We are writing to bring to your attention our continued disappointment with the Ethics Commissions work to protect the public trust. We had hoped that the 2011 Civil Grand Jury report and this year's Board Budget Analyst review would bring a renewed vigor and commitment to the mission of the Ethics Commission.

We write from the perspective of many different organizations and communities active in our city's public life. Some of our organizations are active in city elections and some are active as advocates for steps we believe will improve the quality of life and government for all of us regardless of our political differences.

Many of us have had no outreach from the Ethics Commission, including regarding the upcoming Interested Persons meeting, although the Commission directed staff to create a robust outreach for community views on the June 5, 2012 Rose Report comparing San Francisco to Los Angeles ethics policy and practices.

~~Within memory, Ethics staff has yet to seek public input on how the Commission is meeting its~~
mandate or to hear from us our proposals on steps that are long overdue. We note that even when members of the Board or a state judge recommended action by Ethics to protect the public trust, Ethics staff did not act. This significantly impacts our confidence in the Commission and its oversight.

Now with the upcoming Interested Persons meeting, the IP notice of the report eliminates significant findings in the Rose Report from the topics on its agenda. We plan to raise those issues either at the meeting or in a separate communication to the Commissioners.

We draw your attention to these specific findings in the Rose Report that were eliminated from the IP discussion topics:

- Los Angeles provides greater disclosure of contributors to soft money spenders, something that is at the heart of the current FPPC effort to determine the contributors hidden from public view in the last state election. San Francisco's system shields these donors from public view.
- Los Angeles provides a Guide for Contributors that makes clear to everyone what the rules are for making donations. We strongly support this, but San Francisco does not provide such a Guide and it is not mentioned in the IP discussion topics.
- Los Angeles allows private citizen suits to enforce penalties. San Francisco does not. Yet this one step would address many of the tensions that surround the Ethics Commission's lackluster enforcement record.
- Los Angeles requires committees making robocalls to voters to disclose their funding sources and provides a reasonable threshold for when disclosures must be made. San Francisco arbitrarily sets a high bar that results in many campaigns being able to avoid making these disclosures.

- Los Angeles prohibits city commissioners from fundraising for other candidates. In San Francisco, city commissioners are the lifeblood of pay-to-play style politics as donors cultivate those contacts for their own interests.
- Los Angeles limits the amount of contributions that candidates may accept from independent expenditure committees if the candidate accepts public financing or agrees to the expenditure ceiling.

We draw your attention to key differences in what LA is doing vs what SF is doing:

- LA bans political contributions from registered lobbyists. So does the State of California. Why doesn't SF?
- LA regards attorneys who give political advice – even if they aren't actually lobbying city officials – as lobbyists who must register and report their activities. We don't.
- LA bans contributions from political appointees to those who appoint them (this is the key ingredient in the money machine of SF pay-to-play as City Commissioners pour money into the mayor's re-election or various committees). Why doesn't SF?
- SF prohibits contractors from making contributions to officials who will decide on their contracts, but leaves open the loophole that allows these same contractors to fundraise for the officials who will make the decisions on their development permits. The great majority of City Hall lobbying is development-related – shouldn't this be addressed?
- SF has another loophole in pay-to-play politics: we ban contributions from those seeking City Hall favors, but we don't ban them from collecting and bundling contributions from others. That's where the real influence is felt.
- SF allows officials to accept political contributions right in City Hall and in City buildings; LA doesn't. Checks can be handed to officials right in the Board chambers or behind closed doors in the Mayor's Office. The State of California bans the acceptance of political contributions in the Capitol. Why doesn't SF?
- LA has a much higher enforcement rate than SF – Harvey Rose found that SF dismisses 76 percent of all cases compared to 19 percent in LA.

As noted above, not only is LA ahead of SF in numerous policy areas, the State of California has adopted a number of reforms as best practices, leaving San Francisco far behind and belying any presumed role as a leader in ethics reform. The Rose Report and the Ethics staff's handling of this issue illustrate our concerns about the general direction and effectiveness of the Commission, and exemplify a dramatic lack of due diligence in ensuring that the SF public is informed about the role of money in politics. We are troubled that San Francisco relies on an Ethics staff that has no known experience in San Francisco campaigns. Without some experience in the real world of politics, San Francisco has constructed a paper house of cards that collapses when it confronts the reality of how politics operates in our city. The Rose Report offers a critical opportunity for action and reform leading to more transparency, fuller accountability and stronger enforcement. We implore the Ethics Commission to review the well-researched Rose Report and develop a package of ethics reforms that will enable SF to assume a new leadership role.

Compared to ten years ago, when Ethics had a smaller staff and smaller budget, today's commission provides less public notice of campaign and lobbying activity, places obstacles in the way of easy access to information on non-compliance with our laws, and makes less information available to the public.

There have been no press releases on the quarterly lobbyist reports in more than seven years. There is no list of city officials who have failed to file the required public disclosures of their financial interests. Instead, the public must undertake a search name by name of every filer to find the non-filers. There is no information for contributors to educate them about the law, and no information on any Ethics activity in languages other than English.

All of this represents significant steps backward from the Ethics Commission's launch and first decade.

We recommend that the Commission members themselves participate in an Interested Persons meeting, that the Commission solicit from the community issues that have yet to be addressed, and that the Commission adopt Ethics Commission-specific performance standards for the Executive Director and the Commission's work that are subject to public comment.

We recommend that the Commission seriously address the Rose Report – now nearly nine months old and still without any attention.

We recommend that the Commission set deadlines for staff implementation of all materials that the law requires be publicly disclosed. It should be noted that the legal requirement of consultant filings by December 15 did not result in public posting of the filings but merely a statement from the Executive Director that the filings would be posted "in due time." Six weeks later, at the end of January, those filings still were not posted, and the public was told to come to the Ethics office to review them.

We believe the Ethics Commission has adopted a passive posture. It has no outreach beyond the groups that themselves contacted Ethics.

Most importantly, there is no discussion of the shifting political landscape that affects the flow of money toward officials who make decisions for the public.

For example, in 2012 a new committee was formed called the Mayor Ed Lee Committee for San Francisco that raised \$400,000, much of it in contributions of over \$25,000 and from those with a financial interest in City Hall decisions. This is legally permitted but avoids the generally understood limits of \$500 contributions and a ban on city contractors regarding committees controlled by elected officials or candidates. By opening this door, we can foresee a time when every city supervisor and official will have their own "general purpose" committee that provides a work-around on campaign contribution limits and sources of contributions. This is an issue that should be a topic for the Ethics Commission.

We fear that the effect is to treat ethics as a political country club, operated for the convenience of staff and the regulated community rather than the public, and that is deferential to the regulated community rather than to its public obligations.

We do not come to this belief easily, and only after repeated instances of the Ethics Commission's reviews by the Civil Grand Jury and others showing that it is not succeeding in its mission.

We have in common a fundamental belief that any progress depends in large measure on transparency in public decisions and the influences brought to bear on decisions, in conjunction with accountability for those decisions and an open process. In our view, this is the most significant responsibility of the city's Ethics Commission, and it is not succeeding.

We respectfully recommend that the Commissioners adopt a posture that leads us into a future that more fully protects the public trust and rejects the passive approach of recent years. Signatories to this letter remain available to discuss these issues.

Respectfully,

Eileen Hansen, Former Ethics Commissioner, Friends of Ethics
Paul Melbostad, Former Ethics Commissioner, Friends of Ethics
Bob Planthold Former Ethics Commissioner; Friends of Ethics

Aaron Peskin, Former President, SF Board of Supervisors; Friends of Ethics
Oliver Luby, Former Ethics Commission Staff; Friends of Ethics
Charles Marsteller, Past Coordinator, SF Common Cause; Friends of Ethics
Karen Babbitt, Community Activist; Friends of Ethics
Larry Bush, Publisher, CitiReport; Friends of Ethics
Marc Salomon, Community Activist; Friends of Ethics
Judy Berkowitz, Coalition for San Francisco Neighborhoods*
Jennifer Clary, San Francisco Tomorrow*
Hulda Garfalo, Former Member, Civil Grand Jury, 2010-2011
Hal Smith, Former Member, Civil Grand Jury, 2010-2011
Richard Knee, Former Member, Sunshine Ordinance Task Force*
Tom Temprano, President, Harvey Milk L/G/B/T Democratic Club*
Bernal Heights Democratic Club
Sierra Club San Francisco Group
and others pending

(* for identification purposes only)

From: LARRY BUSH <sfwtrail@me.com>
To: Mabel Ng <Mabel.Ng@sfgov.org>, "John St. Croix" <john.st.croix@sfgov.org>, Jamienn
Studley <jstudley@publicadvocates.org>, "Benedict Y. Hur" <bhur@kvn.com>
Date: Tuesday, December 04, 2012 12:54PM
Subject: Protest Re: IP meeting on Rose Report

Would you also please see that this letter is forward today to each of the commissioners?

Thank you.

Larry Bush

To the Ethics Commission and Staff:

Friends of Ethics is writing with objections and protests regarding the upcoming "Interested Persons" meetings scheduled for December 4 and 10, 2012.

The Commission notified "Candidates, Treasurers and Interested Persons" of meetings "to discuss recommendations of the Budget Analyst report (also known as the Harvey Rose report) comparing programs of the San Francisco Ethics Commission with those of the Los Angeles Ethics Commission."

The notice was dated November 28, providing only three business days before the first meeting will take place.

The Friends of Ethics bases its protest and objections on the following facts, and by this memo, formally requests that Ethics postpone these meetings until February.

* The proposed Interested Persons meetings do not mention inclusion of a representative from the Board Budget Analyst office to present their report and to discuss its findings. Without their direct involvement, as well as the invited presence of Supervisor Campos who requested the Rose report, the Interested Persons meeting will have only the staff's views of the report as a basis for discussion. We believe this fails to provide the direct interaction and communication that should be part of this process.

- Ethics was requested by the Board of Supervisors to conduct robust and inclusive outreach to all participants in San Francisco's political life. Ethics provided Friends of Ethics with the list used to contact Interested Persons about this meeting. We believe the list provided is not an adequate outreach, includes no community-based organizations active in electoral politics, any of the chartered Democratic clubs or other partisan political organizations, or special focus organizations active in San

Francisco elections. We believe the lack of an inclusive outreach as evidenced by this list denies the Commission of a full discussion of the issues and is weighted toward the regulated community. We are puzzled by the fact that many people who do receive the Interested Persons notices are not on the list provided by Ethics, and seek a clarification on whether additional lists were used that were not disclosed to us. We also note that the late Joe Lynn, while the Campaign Finance Officer for Ethics, not only conducted extensive outreaches for IP meetings, including contacting past treasurers and press and posting notices on local political blogs and chat boards, but also later informed Director St. Croix in writing about those practices for the purpose of encouraging the continuation of such outreach. Unfortunately, those practices were not adopted by Director St. Croix

- Ethics provided insufficient time for a review and analysis of recommendations that are significant and meaningful for the operation and success of the Ethics Commission mission. We believe that Ethics has done the bare minimum of notice of a public meeting and failed to take a serious approach to this important issue. Providing notice three days before the meeting, particularly in the holiday period between Thanksgiving and the first of December, means that no organization has an opportunity to place this issue on their agenda for a discussion or to endorse comments to be provided to the Ethics Commission.
- Ethics prepared an agenda that omitted significant and critically important comparisons between the Los Angeles and San Francisco Ethics Commissions that were included in the Rose report. While Ethics did list specific recommendations from the Rose report, the report itself detailed a number of additional differences that are significant to the San Francisco political community as we know it, and that should be part of a discussion of the Rose report.

Among the omitted points are:

- Los Angeles has a private right of action for citizens to act when Ethics does not; in Los Angeles this can include penalties under a civil action. San Francisco has no such provision. We believe this is essential to meaningfully empower citizens to directly seek compliance with our laws.
- Los Angeles requires disclosure of contributors of \$100 or more to groups making "third party" expenditures. San Francisco does not require public disclosure of this money stream. Disclosure of donors to third party committees would add transparency, particularly if this has become a strategy to allow city contractors to influence elections.
- Los Angeles prohibits contributions from those seeking permits, while San Francisco does not. Friends of Ethics has determined that over 90 percent of all City Hall

lobbying involves permit decisions.

- Los Angeles prohibits commissioners from fundraising for candidates, while San Francisco does not. This is the heart of pay-to-play politics that infects city appointments as commissioners are often the first stop for fundraising on behalf of city elected officials. We note a recent case where a city commissioner hosted a fundraiser that included contributions from city employees from the same department. The candidate returned the contributions, recognizing that commissioners are prohibited from seeking contributions from city employees. However, this demonstrates the potential abuse and underscores that Los Angeles' policy is a stronger and more easily enforced prohibition. We recommend it.
- Los Angeles prohibits fundraising from city contractors and those seeking city actions. San Francisco allows contractors to fundraise and serve on candidate finance committees, although they may not contribute their own funds. Currently San Francisco also does not require candidates to disclose the names of their Finance Committee members. However, we strongly prefer closing the loophole, as Los Angeles has done, by prohibiting city contractors and permit seekers from fundraising.
- Los Angeles requires a more robust disclosure of "paid by" notification on telephone messages when 200 or more people are called. San Francisco sets the threshold at 500 people. Therefore, "paid by" calls to members of political clubs during the endorsement process would be missed under San Francisco's standard but included under LA's standard.
- Los Angeles provides a "Guide for Contributors" that educates donors and reduces confusion on such issues as aggregate contribution limits, prohibitions on officers of organizations receiving city funds, and so forth. This is done at minimal cost and made available on the Internet with no printing or mailing costs. San Francisco does not provide a Guide. Instead, the Ethics staff has recommended that the Commission rewrite the law to overturn specific prohibitions, stating that contributors are confused about the rules. The best approach is Los Angeles, where an educational outreach to contributors is part of their program. We note that San Francisco provides guides and outreach to most others involved in political activities, including committee treasurers, candidates and others but does not include an educational outreach to donors.
- Los Angeles prohibits political contributions from being made at City Hall or other city offices, including offices rented with city funds. San Francisco allows contributions to take place in the mayor's own office, supervisor's offices, at Redevelopment, Planning, Port or other offices – in short, anywhere that a donor chooses to make a contribution. We believe allowing contributions to be made in the workplace of city officials undermines public confidence and is inconsistent with other restrictions on the use of city resources for political purposes.

- Los Angeles has a more robust view of what constitutes lobbying and includes attorneys who offer strategic advice even if they do not directly contact a city official. San Francisco does not require registering or disclosing clients from such attorneys involved in orchestrating a favorable result for a paying client. Attorneys who serve as committee treasurers also do not face the same level of public disclosure as lobbyists.

We believe this list of omitted topics, coupled with the unacceptable short timeframe provided for analysis and review by the political community, and the failure to provide adequate outreach, raises serious concerns that Ethics is not engaged in a serious effort to obtain the public's views on its operations and policies based on the Harvey Rose report.

We further note that Ethics has not provided a public schedule of when it will complete a summary of the Interested Persons meeting and comments, or a schedule for consideration by the full Commission of any recommendations.

In addition, Friends of Ethics requests that the San Francisco Ethics Commission audio record the IP meetings regarding the Rose report and post the recordings on its website, as is done by the Los Angeles City Ethics Commission. In the past, the San Francisco Ethics Commission made audio recordings of its IP meetings, though they were not posted online. The Commission's Directors later discontinued the audio recording altogether, which may have been motivated by valuing the privacy of attendees over public transparency. Given that the Rose report IP meetings are about comparing San Francisco's good government laws with Los Angeles' to consider adopting improvements offered by Los Angeles, Friends of Ethics believes that the first improvement that San Francisco should adopt is the Los Angeles set of standard practices for conducting IP meetings. When it comes to the development of good government law and policy, the public's right to know is paramount. Therefore, Friends of Ethics requests that all future IP meetings held by the San Francisco Ethics Commission be audio recorded and the recordings promptly posted online.

Our reasons for requesting a specific timetable for next steps is based on our observation of lengthy delays in staff action on issues even when raised by the Commission itself. We believe the political community will be unlikely to participate in a process that has no specific and public timetable for action but that could take more than a year to reappear.

For example:

- In July 2011, the Ethics Commission requested that staff draft proposals to close the loophole that allows committees seeking to draft a candidate to fall outside the normal reporting and disclosure requirements. However, staff did not produce a proposal until November 2012, 16 months later, and did so without an Interested Persons meeting to discuss their proposal.
- Also at the July 2011 meeting, the Ethics Commission requested that staff examine the loophole that prevented the Commission from acting in cases of Official Misconduct

by a commissioner. Ethics staff still has not produced a proposal to close that loophole.

- Also in 2011, a Superior Court judge suggested that San Francisco adopt a policy prohibiting commissioners from recommending a specific lobbyist to parties seeking a contract or other decision from that commission. Ethics has not prepared any response to that suggestion.
- In June 2012, Rules Committee Chair Jane Kim requested that the Ethics Commission provide some information on the city's Ethics laws in languages other than English, noting that the rules are as important to donors and committees as they are to the public. The Ethics Commission has taken no steps, including in the election just concluded.

Given this record, we believe that any public process to examine the Harvey Rose Report and build new recommendations must include proposed timelines for action if there is to be public confidence that this process is meaningful.

We also strongly recommend that the Ethics Commission set aside time to allow a full discussion before the Commission itself. We believe that such a discussion should not place a two-minute limit on public members making comments.

For the above reasons and cited facts, Friends of Ethics requests that the Interested Persons meeting on the Harvey Rose Report be postponed until February when the political community will have an opportunity to evaluate the proposals and endorse changes, that the Commission immediately engage in a more robust outreach effort that extends beyond the list provided by Ethics to us, that the conversation be broadened to include all topics of comparison between Los Angeles and San Francisco, and that a proposed timeline for a record of the Interested Persons meeting and action by the Commission be provided.

We submit this protest respectfully and with support for the work of the Commission and specifically for the thorough review of any steps that can improve the Commission and public confidence in our political process.

Signed:

Eileen Hansen, former Ethics Commissioner

Bob Planthold, former Ethics Commissioner

Paul Melbostad, former Ethics Commissioner

Sharyn Saslafsky, former Ethics Commissioner

Bob Dockendorff, former Ethics Commissioner

Joe Julian, former Ethics Commissioner

Oliver Luby, former Ethics Commission staffer

Aaron Peskin, past President, Board of Supervisors

Charles Marsteller, former SF Coordinator, Common Cause

Karen Babbitt, community advocate

Larry Bush, Publisher, CitiReport

December 3, 2012

Glenn Rogers, PLA
3425 Alemany Blvd.
San Francisco, CA 94132
Phone 415 333 9317

San Francisco Ethics Commission
Van Ness Avenue, Suite 220
San Francisco, CA 94102
Phone 415 252 3100

Dear Johnny Hosey,

Thank you for asking my opinion on these important issues.

1. Should San Francisco consider increasing the period during which contractors, subcontractors, principals, etc. may not contribute to political campaigns from six months to twelve months, and prohibit contractors, subcontractors, principals, etc. from fundraising on behalf of candidates?

Yes, contributing and fund raising by contractors and others, 6 months before an election, is a bad idea. Six months, for a commercial or public project, is a normal waiting time for a project of this scope to get started. Even a year is too short a waiting period, in my opinion. This is especially true, when fees and services for development, go into the General Fund. The General Fund makes up for shortfalls in the Pension Fund. This fact makes City workers overly friendly to contractors and developers at a time when the City is reaching its carrying capacity.

2. Should San Francisco explicitly prohibit any political contributions from registered lobbyists?

Yes, the City should prohibit registered Lobbyists from contributing to political campaigns. Especially, given the history of political conduct in the City. Sadly, buildings and projects of historical significance, are lacking in The City. One reason for this is, that the City finds the position of developers and lobbyists, very persuasive or compelling.

3. Should San Francisco increase the frequency with which candidates must report contributions and spending?

No, for an ordinary citizen running for office, providing a necessary message which would never be spoken otherwise, the amount and specific requirements seem burdensome. The Ethics Commission should make it easier for ordinary citizens to run for office, with little office staff, not more difficult. Also, fines need to be levied on abuses on large, well funded campaigns, not on campaigns run by average citizens.

4. Should San Francisco increase the personal contribution limits in order to offset the influence of "unregulated independent expenditures" on City elections?

There is no significant difference between a campaign contribution of \$500 or \$700. This being said, leaving it the same is probably preferred.

5. Should San Francisco reduce the reporting requirement threshold from \$5,000 to \$1,000 for independent expenditures by committees or persons on behalf of or against a candidate or measure?

Having run a campaign myself and being aware of the cost for door hangers (\$375) that can reach 5,000 residents, it would seem that \$1,000 would be a more reasonable limit to ask candidates to report. To ask candidates to report at the \$5,000 amount, would mean numerous expenditures would be bundled into one report.

6. Should San Francisco reduce the amount of time for which extensions of credit to a campaign are reclassified as contributions from the current six months to one month?

Yes, reducing the amount of time for available credit, from 6 months to one month, is preferred. It is best to run a campaign, with cash on hand, rather than on credit, of course.

7. What changes, if any, should San Francisco adopt to its enforcement policies so that its results more closely match the results in Los Angeles?

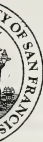
This is a more serious problem than is stated here. The Ethics Commission has never held a misconduct trial for an elected official, Department head or manager, before Sheriff Mirkarimi. The Commission has no real trial guidelines, preferring not to censure Major Lee for perjury in the Sheriff Mirkarimi case. The Ethics Commission demurred since this is a civil matter.

The Ethics Commission has a conflict of interest. The Mayor, Board of Supervisor, City Attorney, District Attorney and the Controller each get to appoint an Ethics Commissioner. These politicians determine the budget of the commission. Should any of these politicians be considered for review by the Ethics Commission, the budget can be influenced. For this reason, many consider the Ethics Commission to be serving the politicians that provide its budget.

Most importantly, the whistle blower program for City employees, does not protect those that come forward with allegations of inappropriate behavior against their Department or Supervisor. Unfortunately, whistle blowers are routinely fired, suspended, laid-off, demoted or shunned by fellow workers. Today, there is still no successful department to track and make public behavior that is wasteful, fraudulent or abusive. May I suggest, this problem might best be handled by, the Sunshine Ordinance Task Force.

Sincerely,

Glenn Rogers, PLA
Landscape Architect
License 3223



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

Date: May 21, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director

Re: Draft regulations to implement electronic filing of SEIs

Under state law enacted last year, local agencies may require that Statements of Economic Interests ("SEIs" or the Form 700s) be filed electronically, in accordance with regulations adopted by the Fair Political Practices Commission (FPPC). Staff of the Ethics Commission, which serves as filing officer for all City department heads and members of boards and commissions, believes that SEIs should be filed electronically. This would make SEIs available for public viewing on the Commission's website within 24 hours of filing, without the need for staff to take in paper versions, manually redact certain information, and then upload them to the website.¹

Under state law, an agency that intends to permit electronic filing of SEIs must submit a proposal describing the e-filing system to the FPPC for certification, and include a fee of \$1,000. See Calif. Gov't Code § 87500.2 and CCR § 18756. Netfile is one of two systems that have already been certified by the FPPC for use in other jurisdictions; staff will work with Netfile on a proposal to request FPPC certification of an Ethics Commission e-filing system.

In the meantime, staff proposes that the Commission consider and approve the following seven draft regulations (set out in four decision points) so that electronic filing of SEIs will be in place beginning January 1, 2014. Once e-filing is in place, all annual, assuming office and leaving office statements filed with the Ethics Commission must be filed online.

The regulations will govern only filers who are required to file their SEIs *with the Ethics Commission* – that is, primarily department heads, elected officials, and appointed members of decision-making boards and commissions. (A list of the Ethics Commission filers from the City's Conflict of Interest Code is pasted below at the end of this memo.) Other City employees, consultants and others who file SEIs with their respective departments will not be affected by these proposed regulations. Depending on how smoothly e-filing for Ethics filers occurs, however, staff may propose regulations to govern these other filers in the forthcoming years.

¹ Under state regulations, the Commission must redact the address, telephone number and signature block of a public official's SEI from the cover page of the SEI before posting it on the internet.

Regulations approved by the Commission take effect 60 days after the date of their adoption unless before the expiration of this 60-day period, two-thirds of all members of the Board of Supervisors vote to veto the regulation(s). S.F. Charter § 15.102. In accordance with Charter section 4.104(a)(1), staff provided notice of these regulations on its website and to interested persons on May 15, 2013.

1. Draft Regulations 3.1-103-1 and 3.1-500-1

There are generally two categories of persons who must file their SEIs with the Ethics Commission. The first category are members of boards and commissions identified in Campaign and Governmental Conduct Code ("C&GC Code") section 3.1-103(a) and (b), department heads identified in C&GC Code section 3.1-103(b)(1), and agency heads identified in C&GC Code section 3.1-103(b)(2). For these filers, the Commission serves as the *filing officer*, which means the SEIs are retained at the offices of the Commission. The second category of filers are persons identified in California Government Code section 87200, who are listed in C&GC Code sections 3.1-500 and 3.1-510. For these filers, the Commission serves as the *filing official*, which means that it receives an original SEI, retains a copy of it, and sends the original to the FPPC for retention. (Under Government Code section 87500.2(g), the Commission will satisfy its duties regarding section 87200 filers by forwarding an electronically filed version of an SEI to the FPPC.)

The draft regulations, as set forth below, provide that all filers who file their SEIs with the Commission, whether the SEIs are retained in their original format at the Commission or sent to the FPPC, must file in an electronic format prescribed by the Ethics Commission.

Draft Regulation 3.1-103-1

Effective January 1, 2014, all persons listed in Section 3.1-103(a) and (b) of the Campaign and Governmental Conduct Code shall file assuming office, annual and leaving office Form 700 Statements of Economic Interests with the Ethics Commission in an electronic format prescribed by the Ethics Commission.

Draft Regulation 3.1-500-1

Effective January 1, 2014, all persons listed in Sections 3.1-500 and 3.1-510 of the Campaign and Governmental Conduct Code shall file assuming office, annual and leaving office Form 700 Statements of Economic Interests with the Ethics Commission in an electronic format prescribed by the Ethics Commission.

Decision Point 1

Shall the Commission approve draft Regulations 3.1-103-1 and 3.1-500-1?

2. Draft Regulations 3.1-103-2 and 3.1-500-2

In order to file an SEI electronically, the filer must provide a working email address to the Ethics Commission. The system will generate a password that will be accessible only to the filer via the email address. The filer will use the email address and password to file an SEI via Netfile. Staff will not have access to the password.

To ensure that the system is prepared to receive filings, staff proposes draft Regulations 3.1-103-2 and 3.1-500-2, set forth below, which will require all persons who are required to file their SEIs with the Commission to submit a working and unique email address to the Commission on or before January 1, 2014.

Draft Regulation 3.1-103-2

All persons listed in Section 3.1-103(a) and (b) of the Campaign and Governmental Conduct Code shall provide to the Ethics Commission a working and unique email address, in addition to a mailing address and telephone number and any other information required by the Ethics Commission consistent with the purposes and provisions of the Conflict of Interest Code. The email address shall be a personal or business email address, which may be a City email address. All such persons shall inform the Ethics Commission within 15 calendar days whenever a change is made to the email address, mailing address, or telephone number provided. All such persons shall provide the email addresses under this regulation within 15 calendar days of assuming office or by January 1, 2014, whichever is later.

Draft Regulation 3.1-500-2

All persons listed in Sections 3.1-500 and 3.1-510 of the Campaign and Governmental Conduct Code shall provide to the Ethics Commission a working and unique email address, in addition to a mailing address and telephone number and any other information required by the Ethics Commission consistent with the purposes and provisions of the Conflict of Interest Code. The email address shall be a personal or business email address, which may be a City email address. All such persons shall inform the Ethics Commission within 15 calendar days whenever a change is made to the email address, mailing address, or telephone number provided. All such persons shall provide the email addresses under this regulation within 15 calendar days of assuming office or by January 1, 2014, whichever is later.

Decision Point 2

Shall the Commission approve draft Regulations 3.1-103-2 and 3.1-500-2?

3. Draft Regulations 3.1-103-3 and 3.1-500-3

Staff has included a small exception to the e-filing requirement. Under the draft regulations, a filer who cannot use a computer or who cannot e-file may seek to continue to file an original paper version of the SEI with the Commission, provided he or she seeks written permission to do so at least 15 days before the report is due.

Draft Regulation 3.1-103-3

A person required to file a Form 700 Statements of Economic Interests in electronic format may make a written request to the Executive Director of the Ethics Commission to seek permission to file an original paper copy instead of filing in electronic format. The person must submit the request at least 15 calendar days prior to the deadline for filing the Form 700 Statement of Economic Interests, and the request must provide the reasons why the request should be granted. The Executive Director may grant or deny the request in his or her discretion.

Draft Regulation 3.1-500-3

A person required to file a Form 700 Statements of Economic Interests in electronic format may make a written request to the Executive Director of the Ethics Commission to seek permission to file an original paper copy instead of filing in electronic format. The person must submit the request at least 15 calendar days prior to the deadline for filing the Form 700 Statement of Economic Interests, and the request must provide the reasons why the request should be granted. The Executive Director may grant or deny the request in his or her discretion.

Decision Point 3

Shall the Commission approve draft Regulations 3.1-103-3 and 3.1-500-3?

4. Draft Regulation 3.1-105-1

C&GC Code Section 3.1-105 requires authorities who appoint officers or employees who file their SEIs with the Commission to notify the Commission whenever such appointees assume or leave office. This notice must be provided within 15 days of the date that the officer or employee assumes or leaves office. The draft regulation requires the notice to contain the name of the officer or employee who has assumed or left office; the name of the board, commission or department; the date on which the officer or employee assumed or left office; and his or her email address, mailing address and telephone number.

Draft Regulation 3.1-105-1

Whenever an appointing authority or official or secretary to a board or commission submits written notice to the Ethics Commission under section 3.1-105(a) or 3.1-105(b), the written notice shall contain the name of the appointee or department head who has assumed or left office; whether the appointee or department head assumed or left office; the name of the board, commission or department; the date on which the appointee or department head assumed or left office; and the email address, mailing address, and telephone number of the appointee or department head.

Decision Point 4

Shall the Commission approve draft Regulation 3.1-105-1?

**Relevant sections of the Conflict of Interest Code
San Francisco Campaign and Governmental Conduct Code section 3.1-100 et seq.**

SEC. 3.1-103. FILING OFFICERS.

Persons holding designated positions shall file the specified statements, declarations, and certificates with the filing officers designated in this Section.

(a) MEMBERS OF BOARDS AND COMMISSIONS.

(1) Members of the following boards and commissions shall file their Form 700 Statements of Economic Interests, Sunshine Ordinance Declarations, and Certificates of Ethics Training with the Ethics Commission:

Access Appeals Commission
Aging and Adult Services Commission
Airport Commission

Arts Commission
Asian Art Museum Commission
Assessment Appeals Board
Board of Appeals
Board of Examiners
Board of Supervisors
Building Inspection Commission
Children and Families First Commission
Citizen's General Obligation Bond Oversight Committee
Civil Service Commission
Commission on the Status of Women
Elections Commission
Entertainment Commission
Environment Commission
Ethics Commission
Film Commission
Fine Arts Museums Board of Trustees
Fire Commission
Golden Gate Park Concourse Authority Board of Directors
Health Commission
Health Service System Board
Historic Preservation Commission
Human Rights Commission
Human Services Commission
Juvenile Probation Commission
Library Commission
Local Agency Formation Commission
Municipal Transportation Agency Board of Directors
Parking Authority
Planning Commission
Police Commission
Port Commission
Produce Market Corporation Board of Directors
Rate Fairness Board
Recreation and Park Commission
Remote Access Network Board
Residential Rent Stabilization and Arbitration Board
Residential Users Appeal Board
Retiree Health Care Trust Fund Board
Retirement Board
Revenue Bond Oversight Committee
San Francisco Public Utilities Commission
Small Business Commission
Sunshine Ordinance Task Force
Treasure Island Development Authority Board of Directors
War Memorial and Performing Arts Center Board of Trustees

Workforce Investment Board

- (2) Members of the following boards and commissions shall file their Form 700 Statements of Economic Interests with the Ethics Commission:

Community College District Board of Trustees
Health Authority Board
Housing Authority Commission
Law Library Board of Trustees (excluding *ex officio* members)
San Francisco Unified School District Board of Education

(b) **DEPARTMENT HEADS.**

- (1) The following department heads of City agencies shall file their Form 700 Statements of Economic Interests, Sunshine Ordinance Declarations, and Certificates of Ethics Training with the Ethics Commission:

Aging and Adult Services, Executive Director
Airport Director
Asian Art Museum, Director
Arts Commission, Director of Cultural Affairs
Assessor-Recorder
Board of Appeals, Executive Director
Board of Supervisors, Clerk
Building Inspection, Director
Child Support Services, Director
Children and Families First Commission, Executive Director
Children, Youth and Their Families, Executive Director
Citizen Complaints, Director
City Administrator
City Attorney
City Librarian
Civil Service Commission, Executive Officer
Commission on the Status of Women, Executive Director
Controller
District Attorney
Economic Workforce and Development, Executive Director
Elections, Director
Emergency Management, Executive Director
Entertainment Commission, Executive Director
Environment, Executive Director
Ethics Commission, Executive Director
Film Commission, Executive Director
Finance Corporation, Chief Financial Officer, President, and Secretary
Fine Arts Museums, Director
Fire Chief
Golden Gate Park Concourse Authority, Chief Executive Officer
Health Service System, Director
Human Resources, Director
Human Rights Commission, Executive Director
Human Services Commission, Executive Director

Juvenile Probation Commission, Chief Probation Officer
Local Agency Formation Commission, Executive Officer
Mayor
Municipal Transportation Agency, Executive Director/CEO
Parking Authority, Director
Planning, Director
Police Chief
Port, Director
Produce Market Corporation, Executive Director
Public Defender
Public Health, Director
Public Works, Director
Recreation and Park, General Manager
Residential Rent Stabilization and Arbitration Board, Executive Director
Retirement System, Executive Director
San Francisco Public Utilities Commission, General Manager
Sheriff
Small Business, Director
Technology, Executive Director
Transportation Authority, Executive Director
Treasurer
War Memorial and Performing Arts Center, Managing Director

- (2) The following department heads shall file their Form 700 Statements of Economic Interests with the Ethics Commission:

Community College District, Chancellor
Health Authority, Chief Executive Officer
Housing Authority, Executive Director
Law Librarian-Secretary
San Francisco Unified School District, Superintendent

- (c) Members of the Civil Grand Jury shall file their Form 700 Statements of Economic Interests with the Executive Officer of the Superior Court.
(d) All other persons holding designated positions shall file their Form 700 Statements of Economic Interests with their respective department head or the executive director of the agency.
(e) In instances where the proper filing officer for a particular, designated position is unclear, the Ethics Commission may designate the filing officer.

SEC. 3.1-105. NOTICE OF APPOINTMENT AND RESIGNATION.

- (a) Every appointing authority whose appointees file statements required by Sections 3.1-101 and 3.1-102 of the Campaign and Governmental Conduct Code with the Ethics Commission shall provide written notice to the Ethics Commission of the name of any appointee who has assumed or left office or employment. Such notice shall be provided within 15 days of the City officer or employee assuming or leaving office or employment. Failure to provide such notice may constitute official misconduct.
(b) Whenever the Mayor or a board or commission appoints a department head, or receives the resignation or retirement notice of a department head, the official or the secretary to the board or commission who makes the appointment or receives the resignation or retirement notice, shall

inform the department head of the necessity to file within 30 days of assuming office or leaving office a statement of economic interests. The official or the secretary of the board or commission who makes the appointment or receives the resignation or retirement notice shall also inform the Ethics Commission of the appointment, resignation or retirement within 15 days of the department head's assumption of or departure from office. Such written notice shall include the name of the department head, and the date on which the department was appointed, resigned or retired. Upon receiving notice of the appointment, or the resignation or retirement, of the department head, the Ethics Commission shall perform the required duties of the filing officer and obtain the required statement of economic interests.

SEC. 3.1-500. POSITIONS FOR WHICH THE FAIR POLITICAL PRACTICES COMMISSION IS THE FILING OFFICER.

Members of the Board of Supervisors, District Attorney, Mayor, City Administrator, City Attorney, Treasurer, and members of the Planning Commission shall file one original of all statements of economic interests with the Ethics Commission, the filing official, who shall make and retain a copy and forward the original to the Fair Political Practices Commission which shall be the filing officer.

SEC. 3.1-510. AGENCY POSITIONS THAT MANAGE PUBLIC INVESTMENTS FOR PURPOSES OF SECTION 87200 OF THE GOVERNMENT CODE.

Pursuant to state law, California Government Code section 87314, the following section identifies the local officials who manage public investments for the purposes of California Government Code section 87200.

Designated Positions	Disclosure Categories
Member, Retirement Board	1
Commission Secretary, Retirement System*	1
Executive Director, Retirement System	1
Deputy Director (Investments), Retirement System*	1
Managing Director, Retirement System*	1
Treasurer	1
Chief Assistant Treasurer*	1
Cash Mgmt. and Investment Officer, Treasurer-Tax Collector's Office*	1
Asst. Cash Mgmt. and Investment Officer, Treasurer-Tax Collector's Office*	1

* These local officials shall file their statements of economic interests with their respective department's filing officer.



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Special Meeting of May 30, 2013

1. Statements of Economic Interests.

April 2, 2013 was the deadline for the receipt of annual Statements of Economic Interests (SEIs). On May 16, 2013, staff sent second notices to 31 non-filers to inform them that the Commission will refer their non-filing status to the Fair Political Practices Commission's (FPPC) enforcement division for investigation and possible prosecution, if the Commission does not receive their SEI filings by June 5, 2013.

As of May 17, 2013, 603 filers have filed their annual SEI forms (including leaving office or assuming office statements) with the Commission. Staff continues to process and post forms on the Commission's website.

2. Investigation and enforcement program.

As of May 21, 2013, there are 23 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	10
Conflict of Interest	8
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	3
TOTAL	23

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on January 31, 2013 for the Second Semi-Annual statement, which covers the reporting period ending December 31, 2012. The next filing deadline that applies to all campaign filers is July 31, 2013 for the First Semi-Annual Statement, which covers the reporting period ending June 30, 2013.

b. Collection of late filing fees and contribution forfeitures. In the FY12-13, as of May 20, the Commission collected a total of \$39,063 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$22,583 of which waiver requests are pending for \$210; and \$6,659 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						TOTAL	\$6,659

4. Revenues report.

For FY 12-13, the Commission was budgeted to generate \$100,000 in revenues. As of May 21, 2013, the Commission received \$116,980 as summarized below. The figure represents collection of approximately 117 percent of expected revenues for FY 12-13.

Revenues received as of May 21, 2013:

Source	Budgeted Amount FY 12-13	Receipts
Lobbyist Fees	\$27,000	\$48,075
Other Ethics General	\$1,000	\$113
Campaign Finance Fines	\$50,000	\$39,063
Campaign Consultant Fees	\$18,000	\$7,400
Lobbyist Fines	\$1,000	\$600
Statements of Economic Interests Fines	\$1,000	\$5,580
Other Ethics Fines	\$1,000	\$14,477
Campaign Consultant Fines	\$1,000	\$600
Unallocated	\$0	\$1,072
Total	\$100,000	\$116,980

5. Lobbyist program.

As of May 16, 2013, 86 individual lobbyists were registered with the Commission. For FY 12-13, as of May 16, 2013, total revenues collected were \$48,675, including \$48,075 in lobbyist registration fees and \$600 in late fines. The filing deadline for the next lobbyist disclosure statement is June 17, 2013.

6. Campaign Consultant program.

As of May 21, 2013, 20 campaign consultants were registered with the Commission. \$7,400 in registration fees and \$600 in fines have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Monday, June 17, 2013. Staff will send reminders to all active campaign consultants two weeks before the deadline.

7. Outreach and Education.

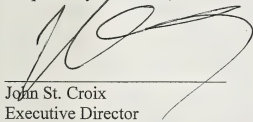
Staff conducted a training session on May 1, 2013 for candidates and their treasurers about campaign finance requirements, the voluntary expenditure ceilings applicable to each race (City Attorney, Treasurer, Assessor/Recorder) and the public financing program applicable to candidates for the District 4 seat on the Board of Supervisors.

On May 8, 2013, staff met with a delegation of 11 Yunnan civil servants representing the Yunnan Provincial Bureau, China. The group, organized by Triway International Group, which hosts Chinese delegations in the U.S. for educational and exchange purposes, was interested in learning about the work of the Ethics Commission, investigations, and performance standards.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training
- SIA Template Language Training

Respectfully submitted,



John St. Croix
Executive Director

S\ED Report\2013\5.30.13 special.doc



Minutes of the Special Meeting of
The San Francisco Ethics Commission
May 30, 2013
Room 416, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

GOVERNMENT
DOCUMENTS DEPT

JUN 20 2013

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I. Call to order and roll call.

Chairperson Hayon called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Beverly Hayon, Chairperson; Paul A. Renne, Vice-Chairperson; Benedict Y. Hur, Commissioner; Jamieenne S. Studley. (The fifth Commission member was vacant.)

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Steven Massey, Information Technology Officer; Catherine Argumedo, Investigator/Legal Analyst; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney (DCA).

OTHERS PRESENT: Alan Martinez, former Historic Preservation Commissioner; Larry Bush; David Pilpel; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Request for Waiver from member of Historical Preservation Commission, dated May 20, 2013;
- Waiver request from Mr. Martinez, dated April 17, 2013;
- Staff Memorandum re: The Budget Analyst Report and Summary of Comments Received at Following Interested Persons Meetings, dated May 20, 2013;
- Budget Analyst Report, dated June 5, 2012;
- Staff Memorandum re: Draft regulations to implement electronic filing of SEIs, dated May 21, 2013;
- Draft minutes of the Commission's Regular Meeting of April 22, 2013;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Larry Bush, representing Friends of Ethics, stated that the agenda should include an update on pending state legislation.

III. Discussion and possible action on request for waiver from Alan Martinez, an architect who formerly held a seat on the Historic Preservation Commission, from the one-year ban on communicating with his former department in order to influence a government decision.

Executive Director St. Croix introduced the item.

Alan Martinez stated that he was seeking a waiver so that he may continue to work as an architect within the City. He stated that the law does not differentiate between the Historic Preservation Committee and the Planning Department for the purposes of the one-year ban. He stated that he mainly does small remodeling work and would not appear before the Historic Preservation Committee. He stated that when he accepted the appointment to the Historic Preservation Committee he was not informed that the one-year ban would apply to communications with the Planning Department or Planning Commission.

Commissioner Studley expressed that it was important for the Commission to reach out to the various boards and commission in the City so the members would understand all the rules regarding their appointments.

Public Comment:

Larry Bush stated that he had no opinion on whether or not the Commission should approve the waiver, but stated that the Commission has approved six out of seven waiver requests, with the only denial being for an appointee of Ross Mirkarimi.

Motion 13-05-30-01 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission approve the waiver request so that Mr. Martinez may communicate with Planning, with the stipulation that he not represent clients before the Historical Preservation Committee for one year, and that the waiver be limited to Mr. Martinez's communications on behalf of his architectural clients and not extend to communications to influence governmental decisions on behalf of other persons or entities.

IV. Discussion and possible action on Budget Analyst report.

Executive Director St. Croix introduced the item. He proposed discussing each question presented separately.

Question 1

Should San Francisco increase the period during which contractors, subcontractors, principals, etc. may not contribute to political campaigns from six months to twelve months, and prohibit contractors, subcontractors, principals, etc. from fundraising on behalf of candidates?

The Commission members engaged in a discussion regarding the question presented.

Public Comment:

Larry Bush stated that a 12-month ban is better because contracts often get modified.

Glenn Rogers stated that the longer the ban is the less likely a contribution is going to influence a public official.

David Pilpel stated that this might not apply to agencies that are subject to state law.

Executive Director St. Croix stated that based on the discussion, staff would draft a proposed legislation to increase the ban to 12 months for the Commission's consideration.

Question 2

Should San Francisco explicitly prohibit any political contributions from registered lobbyists?

The Commission members engaged in a discussion regarding the question presented. The Commission determined that staff should re-address this issue after reviewing the pending legislation regarding changes to the lobbyist ordinance currently at the Board of Supervisors.

Public Comment:

Larry Bush stated that his organization supports a complete ban on lobbyist contributions.

Glenn Rogers stated that lobbyists have significant influence regarding development issues and should be banned from making campaign contributions.

Question 3

Should San Francisco increase the frequency with which candidates must report contributions and spending?

Executive Director St. Croix stated that reporting requirements may be changing under proposed legislation at the state level that would be applicable to the City.

The Commission decided to postpone discussion regarding this question to see what occurs at the state level.

Public Comment:

None.

Question 4

Should San Francisco increase the personal contribution limits in order to offset the influence of "unregulated independent expenditures" on City elections?

The Commission members discussed the question presented, in particular the idea of raising the limit for City-wide elective offices.

Public Comment:

None.

Question 5

Should San Francisco reduce the reporting requirement threshold from \$5,000 to \$1,000 for independent expenditures by committees or persons on behalf of or against a candidate or measure?

Executive Director St. Croix stated that reporting requirements may be changing under proposed legislation at the state level that would be applicable to the City.

The Commission decided to postpone discussion regarding this question to see what occurs at the state level.

Public Comment:

Larry Bush stated that this issue should be addressed before the November 2013 election.

Question 6

Should San Francisco reduce the amount of time for which extensions of credit to a campaign are reclassified as contributions from the current six months to one month?

The Commission members discussed the question presented. The Commission members asked the Executive Director why a shorter repayment period would make a difference regarding the classification of the debt.

Executive Director St. Croix stated that the proposal would limit instances where vendors extend credit as a favor to campaigns in order to pay other creditors.

Public Comment:

Larry Bush stated that vendors float loans to candidates in order to gain favor with the candidate if they are successful in their election.

The Commission directed the Executive Director to get feedback from small campaign committees regarding the burden shortening of time would create.

Question 7

What changes, if any, should San Francisco adopt to its enforcement policies so that its results more closely match the results in Los Angeles?

Commissioner Hur stated that he would like staff to more accurately compare enforcement results with those of Los Angeles.

After discussing the question presented, the Commission members directed staff to present ideas at a future date in order to improve the enforcement process.

Public Comment:

Larry Bush stated that the Commission should include referrals made to the California Fair Political Practices Commission in the monthly Executive Director report. Mr. Bush also stated that the Commission should actively enforce provisions that require committees to return improper contributions to the City. Mr. Bush also stated that the accessibility of information should be improved.

David Pilpel stated that transparency of enforcement matters is important. He stated that the Commission should look for new ways to achieve better results within its current resources.

V. Discussion possible action on draft regulations to implement the electronic filing of the Form 700 Statement of Economic Interests with the Ethics Commission beginning on January 1, 2014.

Deputy Executive Director Ng introduced the item. She stated that the State approved electronic filing of Form 700s and these regulations will allow the Commission to begin requiring electronic filing of those forms. She stated that electronic filing provides for more timely disclosure of information.

Deputy Executive Director Ng presented the first draft regulations for consideration. She stated that Draft Regulations 3.1-103-1 and 3.1-500-1 will provide that annual and leaving office Form 700s must be filed with the Ethics Commission in an electronic format, effective January 1, 2014.

After discussion, the Commission agreed that filers identified in Draft Regulations 3.1-500-1, 3.1-500-2, and 3.1-500-3 already appear in Draft Regulations 3.1-103-1, 3.1-103-2, and 3.1-103-3; accordingly, Deputy Director Ng suggested that the Commission delete Draft Regulations 3.1-500-1, 3.1-500-2, and 3.1-500-3 from consideration.

Public Comment:

David Pilpel supported the regulations, but stated he had concerns about implementation.

Motion 13-05-30-02 (Renne/ Hur): Moved, seconded, and passed (4-0) that the Commission approve Draft Regulation 3.1-103-1.

Deputy Executive Director Ng stated that the next regulation would require filers to provide a working email address to the Ethics Commission in order to generate a password that will be accessible only to the filer via the email address. She stated that the filer will use the email address and password to file an SEI via Netfile and that staff will not have access to the password.

Public Comment:

David Pilpel stated that he had concerns about the burden this places on City officers who do not have email addresses.

Motion 13-05-30-03 (Studley/Renne): Moved, seconded, and passed (4-0) that the Commission approve Draft Regulation 3.1-103-2.

Deputy Executive Director Ng stated that Draft Regulation 3.1-103-3 provides an exception to the e-filing requirement for a filer who cannot use a computer or who cannot e-file to continue to file an original paper version of the SEI with the Commission, provided he or she seeks written permission to do so at least 15 days before the report is due.

Commissioner Hur proposed adding the language “compelling reason” to the portion of the regulations that require a requestor to seek written permission for the exemption.

Public Comment:

Larry Bush stated that the ability to search for data with electronic filing is greatly enhanced.

David Pilpel stated that most filers would electronically file, but the waiver is important.

Motion 13-05-30-04 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission approve Draft Regulation 3.1-103-3 with the amended language requiring a “compelling reason” for the exemption.

Deputy Executive Director Ng presented the last Draft Regulation. She stated that San Francisco Campaign and Governmental Conduct Code, section 3.1-105 requires authorities who appoint officers or employees who file their SEIs with the Commission to notify the Commission whenever such appointees assume or leave office. She stated that Draft Regulation 3.1-105-1 will require that the notice contain the name of the officer or employee who has assumed or left office; the name of the board, commission or department; the date on which the officer or employee assumed or left office; and his or her email address, mailing address and telephone number.

Public Comment:

David Pilpel stated that good outreach will be necessary to make this provision effective.

Motion 13-05-30-05 (Renne /Hur): Moved, seconded, and passed (4-0) that the Commission approve Draft Regulation 3.1-105-1.

VI. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission. Closed Session.

Public Comment:

None.

Motion 13-05-30-06 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission go into closed session.

The Commission went into closed session at 7:48 PM. Commission staff member Steven Massey and all members of the public left the room. At 8:08 PM, the respondent to an enforcement matter left the room.

The Commission went into open session at 8:27 PM.

Motion 13-05-30-07 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission keep closed session matters confidential.

VII. Discussion and possible action on the minutes of the Commission's Regular Meeting of April 22, 2013.

Public Comment:

David Pilpel stated that the summary of his comments on page six of the draft minutes incorrectly stated that he said "gentlemen's agreement" instead of "settlement agreement."

Motion 13-05-30-07 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission approve the minutes of the Commission's Regular Meeting of April 22, 2013, with the change of "gentlemen's agreement" to "settlement agreement."

VIII. Discussion of the Executive Director's Report.

Executive Director St. Croix presented the monthly report.

Public Comment:

None.

IX. Items for future meetings.

Vice-Chairperson Renne stated that he would like to discuss including expenditure lobbyists in the Lobbyist Ordinance.

Chairperson Hayon stated that she would like to discuss possible regulations regarding how the Commission handles complaint referrals to outside agencies.

Public Comment:

None.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

David Pilpel stated that the Commission should discuss the proposed changes to various ethics laws proposed by Supervisor Chiu and City Attorney Herrera.

XI. Adjournment.

Motion 13-05-30-08 (Studley/Renne): Moved, seconded, and passed (3-0; Studley excused) that the Commission adjourn.

The meeting adjourned at 8:39 PM.



Minutes of the Special Meeting of
The San Francisco Ethics Commission
May 30, 2013
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JUN 27 2013

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Commissioner Studley expressed that it was important for the Commission to reach out to the various boards and commission in the City so the members would understand all the rules regarding their appointments.

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David Pilpel alerted the Commission that filers identified in Draft Regulations 3.1-500-1, 3.1-500-2, and 3.1-500-3 already appear in Draft Regulations 3.1-103-1, 3.1-103-2, and 3.1-103-3; accordingly, Deputy Director Ng suggested that the Commission delete Draft Regulations 3.1-500-1, 3.1-500-2, and 3.1-500-3 from consideration.

Public Comment:

David Pilpel supported the regulations, but stated he had concerns about implementation.

Motion 13-05-30-02 (Renne/ Hur): Moved, seconded, and passed (4-0) that the Commission approve Draft Regulation 3.1-103-1.

Deputy Executive Director Ng stated that the next regulation would require filers to provide a working email address to the Ethics Commission in order to generate a password that will be accessible only to the filer via the email address. She stated that the filer will use the email address and password to file an SEI via Netfile and that staff will not have access to the password.

Public Comment:

David Pilpel stated that he had concerns about the burden this places on City officers who do not have email addresses.

Motion 13-05-30-03 (Studley/Renne): Moved, seconded, and passed (4-0) that the Commission approve Draft Regulation 3.1-103-2.

Deputy Executive Director Ng stated that Draft Regulation 3.1-103-3 provides an exception to the e-filing requirement for a filer who cannot use a computer or who cannot e-file to continue to file an original paper version of the SEI with the Commission, provided he or she seeks written permission to do so at least 15 days before the report is due.

Commissioner Hur proposed adding the language "compelling reason" to the portion of the regulations that require a requestor to seek written permission for the exemption.

Public Comment:

Larry Bush stated that the ability to search for data with electronic filing is greatly enhanced.

David Pilpel stated that most filers would electronically file, but the waiver is important.

Motion 13-05-30-04 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission approve Draft Regulation 3.1-103-3 with the amended language requiring a "compelling reason" for the exemption.

Deputy Executive Director Ng presented the last Draft Regulation. She stated that San Francisco Campaign and Governmental Conduct Code, section 3.1-105 requires authorities who appoint officers or employees who file their SEIs with the Commission to notify the Commission whenever such appointees assume or leave office. She stated that Draft Regulation 3.1-105-1 will require that the notice contain the name of the officer or employee who has assumed or left office; the name of the board, commission or department; the date on which the officer or employee assumed or left office; and his or her email address, mailing address and telephone number.

Public Comment:

David Pilpel stated that good outreach will be necessary to make this provision effective.

Motion 13-05-30-05 (Renne /Hur): Moved, seconded, and passed (4-0) that the Commission approve Draft Regulation 3.1-105-1.

VI. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission. Closed Session.

Public Comment:

None.

Motion 13-05-30-06 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission go into closed session.

The Commission went into closed session at 7:48 PM. Commission staff member Steven Massey and all members of the public left the room. At 8:08 PM, the respondent to an enforcement matter left the room.

The Commission went into open session at 8:27 PM.

Motion 13-05-30-07 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission keep closed session matters confidential.

VII. Discussion and possible action on the minutes of the Commission's Regular Meeting of April 22, 2013.

Public Comment:

David Pilpel stated that the summary of his comments on page six of the draft minutes incorrectly stated that he said "gentlemen's agreement" instead of "settlement agreement."

Motion 13-05-30-07 (Hur/Renne): Moved, seconded, and passed (4-0) that the Commission approve the minutes of the Commission's Regular Meeting of April 22, 2013, with the change of "gentlemen's agreement" to "settlement agreement."

VIII. Discussion of the Executive Director's Report.

Executive Director St. Croix presented the monthly report.

Public Comment:

None.

IX. Items for future meetings.

Vice-Chairperson Renne stated that he would like to discuss including expenditure lobbyists in the Lobbyist Ordinance.

Chairperson Hayon stated that she would like to discuss possible regulations regarding how the Commission handles complaint referrals to outside agencies.

Public Comment:

None.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

David Pilpel stated that the Commission should discuss the proposed changes to various ethics laws proposed by Supervisor Chiu and City Attorney Herrera.

XI. Adjournment.

Motion 13-05-30-08 (Studley/Renne): Moved, seconded, and passed (3-0; Studley excused) that the Commission adjourn.

The meeting adjourned at 8:39 PM.







Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

SAN FRANCISCO ETHICS COMMISSION

NOTICE OF REGULAR MEETING

June 24, 2013 5:30 P.M.

and AGENDA

Room 400 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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JUN 20 2013

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Discussion and possible action on matters submitted under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance. Under Chapter Three, the Executive Director has prepared a written report and recommendation summarizing his factual and legal findings on each of the following matters. Respondents and Complainant may speak on their own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; each Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful or non-willful violation of the Sunshine Ordinance. (Attachments: for each matter listed, notice letters from the Commission staff to Complainant and Respondents, staff report with recommendation and attachments, and any documents submitted to the Commission by the Complainant and/or Respondents; a copy of the Ethics Commission Regulations for Violations of the Sunshine Ordinance and a copy of the Sunshine Ordinance, Chapter 67 of San Francisco Administrative Code.)
- a) Ethics Complaint No. 02-120402 regarding alleged willful violation of Sunshine Ordinance by elected officials (referred from the Sunshine Ordinance Task Force on April 2, 2012)
Complainant: Pastor Gavin
Respondents: David Chiu, Malia Cohen, Eric Mar, and Scott Wiener, members of the San Francisco Board of Supervisors
- b) Ethics Complaint No. 01-130307 regarding alleged willful violation of Sunshine Ordinance by department head (referred from the Sunshine Ordinance Task Force on March 7, 2013)

Complainant: Ray Hartz

Respondent: Luis Herrera, City Librarian, San Francisco Public Library

- IV. Discussion and possible action on matters submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance. Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondents bear the burden of showing that the Task Force erred in its determination. In each of the following show cause hearings, the votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. Respondents and Complainant may speak on their own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a five-minute rebuttal. (Attachments: for each matter listed, copies of all documents received from the Sunshine Ordinance Task Force, notice letters from the Commission staff to the Respondent(s) and Complainant, and any documents submitted to the Commission by the respective Respondent(s) and/or Complainant; a copy of the Ethics Commission Regulations for Violations of the Sunshine Ordinance and a copy of the Sunshine Ordinance, Chapter 67 of San Francisco Administrative Code.)
- a) Ethics Complaint No. 02-130307 (referred from the Sunshine Ordinance Task Force on March 7, 2013)
Complainant: The Library Users Association
Respondent: San Francisco Arts Commission
- V. Discussion and possible action on a draft "Contributor Guide," which provides information about local laws governing campaign contributions. (Attachment: draft Contributor Guide.)
- VI. Discussion and possible action on the minutes of the Commission's special meeting of May 30, 2013. (Attachment: May 30, 2013 draft minutes.)
- VII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)
- VIII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- X. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

ENFORCE YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: www.sfgov.org/ethics.





ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

Date: June 17, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director

Re: **Hearing – Ethics Complaint 02-120402**

Enclosed is the Report and Recommendation for the above complaint. David Chiu, Malia Cohen, Eric Mar, and Scott Weiner are the named Respondents. Pastor Gavin is the named Complainant. Staff originally scheduled the matter to be heard during the regular Ethics Commission meeting of February 25, 2013. The matter was postponed to be heard at this meeting. All parties received a copy of the Report and Recommendation and a Hearing Notice prior to February 25, 2013, pursuant to the Ethics Commission Regulations for Violations of the Sunshine Ordinance (“Regulations”).

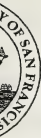
Under the Regulations neither the Respondents nor the Complainant are required to attend. However, if any party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party’s absence.

Under Chapter Three of the Regulations, the Executive Director shall prepare a written Report and Recommendation summarizing his or her factual and legal findings. Each Complainant and Respondent may submit a written response to the Director’s Report and Recommendation. All responses to the Report and Recommendation are attached.

Each Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; each Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance.





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Date: February 1, 2013

To: Members, Ethics Commission

Cc: David Chiu, President of the Board of Supervisors
Malia Cohen, Supervisor
Eric Mar, Supervisor
Scott Wiener, Supervisor
Pastor Gavin
Members, Sunshine Ordinance Task Force

From: John St. Croix, Executive Director

Re: **REPORT AND RECOMMENDATION**
ETHICS COMMISSION COMPLAINT NO. 02-120402

INTRODUCTION AND JURISDICTION

On April 2, 2012, the Ethics Commission ("Commission") received a referral from the Sunshine Ordinance Task Force ("Task Force") for the Task Force complaint number 11048. The written referral stated: "The [Task Force] hereby provides notification of willful failure and official misconduct findings against San Francisco Board of Supervisors President David Chiu, Supervisor Eric Mar, Supervisor Scott Wiener, and Supervisor Malia Cohen ("Respondents") for failure to comply with Sunshine Ordinance public meeting provisions." Specifically, all four Respondents were found to have violated San Francisco Administrative Code, section 67.7(b) ("Sunshine Ordinance" or "Ordinance"), for "not providing the public with copies of the amendment to the Development Agreement which were provided to the policy body

in connection with an agenda item,” and sections 67.15(a) and (b) for “failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments.”

The referral was made pursuant to Sunshine Ordinance, section 67.34, for the willful failure of the named Respondents to comply with provisions of the Ordinance. Sunshine Ordinance, section 67.34, provides that complaints involving allegations of willful violations of the Ordinance shall be handled by the Commission. Complaints alleging willful violations of the Ordinance by elected officials or department heads are handled pursuant to the Commission’s Regulations for Violations of the Sunshine Ordinance (“Regulations”), Chapter Three. Under Chapter Three, the Executive Director must prepare a written report and recommendation summarizing his or her factual and legal findings, applicable legal provisions, and evidence gathered. The report and recommendation must also recommend whether or not a Respondent willfully violated the Ordinance, non-willfully violated the Ordinance, or did not violate the Ordinance. The Commission is not bound by the Executive Director’s recommendation.

SUMMARY OF FACTUAL FINDINGS

On Tuesday, May 24, 2011, at 9:00 a.m., the Board of Supervisors Land Use and Economic Development Committee (“Committee”) held a Special Meeting.¹ On the posted agenda for the Special Meeting were five items for discussion: Item 1) Transfer Agreement - Alice Griffith Public Housing Opportunity Center; Item 2) Development Agreement - Parkmerced; Item 3) Planning Code - Special Use District - Parkmerced; Item 4) Planning Code - Zoning Map Amendments - Parkmerced; and Item 5) General Plan Amendment - Parkmerced. Each item on the agenda contained a description of the matter to be heard. Because Items 2

¹ At the time of this Special Meeting, the Committee held its regular meetings weekly on Mondays at 1:00 p.m.

through 5 were related to Parkmerced, the Committee heard those matters as a single item. Present at the Special Meeting were Supervisors Mar, Weiner, and Cohen (the Committee members), Supervisor Elsbernd (whose district includes Parkmerced) and President Chiu. Shortly after the consolidated item was introduced, President Chiu stated that he was introducing various amendments to the Development Agreement between the City and Parkmerced's owners.²

Copies of a 14-page document containing the amendments ("amendments") were distributed to the Committee. The 14-page document contained changes to the proposed Development Agreement between the City and Parkmerced. President Chiu also stated that copies of the amendments were available for the public, as well as a two-page summary document which outlined the proposed amendments. President Chiu instructed Judson True, his Legislative Aide, to provide either a copy of the amendments or the summary, or both, to any member of the public present at the meeting who wanted a copy.

During public comment, several speakers stated that they had read the amendments that were distributed at the meeting, but that they would have appreciated more time to review the document. Before voting on the motion regarding the Development Agreement, the Committee asked its legal counsel, Deputy City Attorney Cheryl Adams, if the amendments created a substantive change to the notice provided for on the posted meeting agenda. She advised that the amendments were within the scope of the language contained in the notice of the items posted on the agenda. She advised that the Committee could consider the matter with the inclusion of the amendments.

² The Development Agreement was part of the ordinance that the Committee was considering and that would be moved to the full Board of Supervisors regarding the redevelopment of Parkmerced.

On June 20, 2011, Pastor Gavin and nine anonymous individuals submitted a complaint to the Task Force alleging that Supervisor Mar violated sections 67.7(a-d) and 67.7-1 of the Ordinance. On August 23, 2011, the Task Force held a hearing on the matter and determined that Supervisor Mar violated sections 67.7(b), 67.15(a), and 67.15(b) of the Ordinance. Both Pastor Gavin and the Legislative Aide to Supervisor Mar were present. Supervisor Mar's Aide stated that because it was President Chiu who introduced the amendments, any violation that the Task Force found should not be attributed to Supervisor Mar. The Task Force then amended the complaint to include President Chiu, and Supervisors Cohen and Weiner, and continued the matter. On September 2, 2011, the Task Force issued its "Order of Determination" ("Order") reflecting its determination that Supervisor Mar violated the Ordinance and that the Task Force continued the matter to hear from President Chiu and Supervisors Cohen and Wiener.

On September 27, 2011, the Task Force heard the continued matter and determined that President Chiu, Supervisor Cohen, and Supervisor Wiener also violated Ordinance sections 67.7(b), 67.15(a), and 67.15(b). Judson True attended and stated that he personally distributed both the amendments and summary to every member of the public in attendance at the Special Meeting who wanted a copy. He stated that the documents were distributed to the Committee at the same time they were distributed to the public. The Complainant disputed that the amendments and summary were distributed to the members of the public. Gillian Gillette, Legislative Aide to Supervisor Weiner, also attended and stated that the Committee relied on the Deputy City Attorney's advice that the amendments did not substantively change the notice on the agenda and that the meeting did not need to be continued or re-noticed. Andrea Bruss, Legislative Aide to Supervisor Cohen, also attended and stated that Supervisor Cohen agreed

with President Chiu and Supervisor Weiner. On November 1, 2011, the Task Force issued its Order reflecting the determination it made on September 27, 2011.

SUMMARY OF APPLICABLE LAW

Sunshine Ordinance Section 67.6(f) provides in pertinent part that “[s]pecial meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings.”

Sunshine Ordinance Section 67.7(b) provides, in reference to a posted agenda item of a regular meeting, that “[a] description is meaningful if it is sufficiently [sic] clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.”

Sunshine Ordinance Section 67.15(a) provides, in pertinent part, that every agenda for a regular meeting “shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body’s [sic] subject matter

jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article.”

Sunshine Ordinance Section 67.15(b) provides that every agenda for a special meeting at which an action is proposed to be taken on an item “shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.”

Sunshine Ordinance Section 67.34 states that “[t]he willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.”

SUMMARY OF EVIDENCE GATHERED

Staff reviewed the video recording of the Committee’s Special Meeting held on May 24, 2011, the Committee’s Special Meeting Agenda (Exhibit 1), and the Agenda’s related documents (Exhibit 2). Staff also reviewed the audio recordings of both Task Force hearings on the matter, and the documents forwarded from the Task Force (Appendix A). Staff reviewed the amendments (Exhibit 3) and summary (Exhibit 4). After reviewing the recordings and documents, staff determined that no interviews were necessary. All documents that staff reviewed are attached to this report.

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LEGAL FINDINGS

A. There was no violation of Ordinance section 67.7(b) because the meeting in question was a Special Meeting.

Sunshine Ordinance Section 67.7 is titled "Agenda Requirements; Regular Meetings."

Section 67.7(b) relates to section 67.7(a), which provides that at least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Section 67.7(b) defines the term "meaningful description" as used in section 67.7(a). Section 67.7(b) provides that notice of an item on an agenda must contain a description of the item that is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting. Section 67.7(b) also provides that documents that have been provided to the policy body in connection with an agenda item shall be posted adjacent to the agenda. It further provides that if the documents are of more than one page in length, they may be made available for public inspection and copying at a location indicated on the agenda during normal office hours.

The notice and agenda requirements for special meetings are outlined in section 67.6(f). That section contains different requirements for the posting of an agenda for a special meeting. The requirements under that section are that notice must be provided within 72 hours in advance of, "the time and place of the special meeting and the business to be transacted." No specific requirements are outlined in section 67.6(f) regarding the time-frame in which documents that may be distributed in connection with the posted agenda item must be made available to the public.

The basis for the Task Force finding that all four Supervisors violated section 67.7(b) was that they did not "[provide] the public with copies of the amendment to the Development Agreement which were provided to the policy body in connection with an agenda item." As discussed, the meeting in question was not a regular meeting. Thus, section 67.7(b) is inapplicable. However, even had the meeting been a regular meeting, there would have been no violation of section 67.7(b).

First, the Development Agreement and other supporting documents were posted with the agenda. Second, the finding of the Task Force that the public was not provided with copies of the amendment to the Development Agreement which were provided to the policy body in connection with an agenda item does not accurately reflect what occurred at the Special Meeting. The amendments were distributed to the public at the same time as they were distributed to the Committee.

Under section 67.7(b) the issue was not whether the amendments were provided to the public; rather, the issue was whether the introduction of the amendments substantively changed the item so that the notice provided was no longer adequate to apprise a member of the public that he or she may have reason to attend the meeting.

The agenda item was worded broadly enough to encompass the consideration of the amendments to the Development Agreement that was discussed at the meeting. The four agenda items that related to Parkmerced were noticed with descriptions that were clear and specific to alert a member of the public whose interests were affected by the item that he or she may have reason to attend the meeting. The video recording of the Committee meeting shows that President Chiu, who introduced the item, stated that copies of the amendments were available for the public, and that he instructed his Aide to distribute the document to anyone who wanted a

copy. The document distributed at the meeting contained the proposed amendments to the agenda item that was being discussed and that was noticed on the agenda. In addition, the Committee acted on the advice of the Deputy City Attorney who stated the amendments were within the scope of the language on the agenda of the noticed items, and that their introduction did not substantively change the notice for the item that appeared on the agenda.

In summary, there was no violation of section 67.7(b) as to all Respondents because: 1) that section relates specifically to agenda requirements for regular meetings, 2) the document was actually made available to the public during the special meeting, 3) the introduction of the item did not substantively change the description provided for in the agenda, and 4) the Committee reasonably relied on the advice of its legal counsel that it could proceed.

B. There is no violation of section 67.15(a) or 67.15(b) because the meeting in question was a Special Meeting and public comment was provided for on the posted agenda item.

The Task Force found the violations of section 67.15(a) and (b) because it determined that the four Supervisors failed to “adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments.” However, section 67.15 does not govern the notice requirements of an agenda, and staff has only addressed this issue because the Task Referral included these violations.

Section 67.15 addresses in its entirety the requirement that a policy body allow for public testimony at a meeting. Subsection (a) specifically outlines that each agenda for a regular meeting of a policy body must include an agenda item in which the public may “directly address a policy body on items of interest to the public that are within policy body’s subject matter

jurisdiction (commonly referred to as “general public comment”).”³ As discussed above, the meeting in question here was a special meeting; thus, the requirements of 67.15(a) are inapplicable. The requirements for public testimony at a special meeting are outlined in section 67.15(b).

Section 67.15(b) states that “[e]very agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.” Supervisor Mar stated at the beginning of the meeting that public comment would be limited to two minutes per individual. Public comment took place during the combined item regarding Parkmerced and each individual was allowed up to the full two minutes to speak. Not only did the agenda provide for public comment on the posted item; public comment actually occurred.

RECOMMENDATION

Based on the above reasons staff recommends that the Commission find:

- 1) President Chiu did not violate the Sunshine Ordinance as to all allegations, and
- 2) Supervisor Cohen did not violate the Sunshine Ordinance as to all allegations, and
- 3) Supervisor Mar did not violate the Sunshine Ordinance as to all allegations, and
- 4) Supervisor Weiner did not violate the Sunshine Ordinance as to all allegations.

³ Section 67.15(a) also provides that “the agenda need not provide an opportunity for members of the public to address the [Board of Supervisors] on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee’s consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.”

From: John St.Croix/ETHICS/SFGOV
To: Catherine Argumedo/ETHICS/SFGOV@SFGOV, Garrett Chatfield/ETHICS/SFGOV@SFGOV, Mabel Ng/ETHICS/SFGOV@SFGOV

Date: Friday, February 15, 2013 04:01PM
Subject: Fw: Response re: Ethics Commission Complaint No. 02-120402

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

-----Forwarded by John St.Croix/ETHICS/SFGOV on 02/15/2013 04:00PM -----
To: "St.Croix, John" <john.st.croix@sfgov.org>
From: "Chiu, David" <david.chiu@sfgov.org>
Date: 02/15/2013 03:59PM
Subject: Response re: Ethics Commission Complaint No. 02-120402

Mr. St Croix - Please see below and distribute as appropriate.

February 15, 2013

Re: Ethics Commission Complaint No. 02-120402

Dear Chairperson Hur and Members of the Ethics Commission:

Thank you for the opportunity to provide written comment regarding the above complaint. I agree with the staff recommendation - and the reasoning behind it - that I did not violate the Sunshine Ordinance. I followed the clear advice of the Deputy City Attorney at the Land Use Committee meeting of May 24, 2011.

Thank you very much for your consideration in this matter.

Sincerely,

David Chiu

Member, Board of Supervisors
District 8



City and County of San Francisco

2013 FEB 14 PM 1:49

SCOTT WIENER

SAN FRANCISCO
ETHICS COMMISSION

威善高

BY _____

February 13, 2012

John St. Croix
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

RE: Hearing – Ethics Complaint 02-120402

Dear Mr. St. Croix:

On the matter referenced above, I agree with your recommendation to the Commission that I did not violate the Sunshine Ordinance. I appreciate this opportunity to respond.

Sincerely,

Scott Wiener

Scott Wiener
Supervisor, District 8

SW/AP



SUNSHINE ORDINANCE
TASK FORCE



FILED
City Hall
262 2nd Floor, B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

March 13, 2012

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Sunshine Complaint No. 11048, Pastor Gavin v. Supervisor Mar (Part 1) and Pastor Gavin v. Supervisor Chiu, Supervisor Wiener, and Supervisor Cohen (Part 2)
Notice of Willful Failure and Official Misconduct**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against San Francisco Board of Supervisors President David Chiu, Supervisor Eric Mar, Supervisor Scott Wiener, and Supervisor Malia Cohen for failure to comply with Sunshine Ordinance public meeting provisions (see S.F. Admin. Code Sec. 67) in Sunshine Complaint No. 11048, *Pastor Gavin v. Supervisor Mar* (Part 1) and *Pastor Gavin v. Supervisor Chiu, Supervisor Wiener, and Supervisor Cohen* (Part 2).

This referral is made in request for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct;"
- (2) San Francisco City Charter Section 15.102 which provides that the Ethics Commission "may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records;"
- (3) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (4) Sunshine Ordinance Section 67.30(c) which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

Background

Anonymous complainant "Pastor Gavin" filed a complaint with the Task Force on June 20, 2011 alleging Supervisor Eric Mar violated public meeting laws during the Board of Supervisor's Land Use Committee meeting on May 24, 2011. Supervisor Mar is Chair of the Land Use Committee.

On August 23, 2011, the Task Force named the two other Land Use Committee members, Supervisor Wiener and Supervisor Cohen, and President Chiu as additional respondents to the complaint.

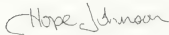
Task Force Hearings on Complaint

On August 23, 2011, the Task Force held the first hearing on the complaint. The Task Force found Supervisor Mar in violation of Sunshine Ordinance public meeting laws. The Task Force continued the complaint to its September 27, 2011 meeting and named President Chiu, Supervisor Wiener, and Supervisor Cohen as respondents to the complaint. A description of the hearing, violations found, and the Task Force decision are described in the two Orders of Determination attached to this referral.

On September 27, 2011, the Task Force held the second hearing on the complaint. The Task Force found President Chiu, Supervisor Wiener, and Supervisor Cohen in violation of Sunshine Ordinance public meeting laws. The Task Force further found willful failure and official misconduct against all four respondents, and approved notice of this matter to the District Attorney's Office. A description of the hearing, violations found, the Task Force decision, and the reasoning behind the decision are described in the two Orders of Determination attached to this referral.

Thank you for your attention to this matter. Copies of the two Orders of Determination are attached.

Please confirm receipt of this notice to the Task Force Administrator at softf@sfgov.org or (415) 554-7724. The Administrator is also available to provide any additional information needed.



Hope Johnson, Chair
Sunshine Ordinance Task Force

Encls.

cc: Pastor Gavin, Complainant
Board President David Chiu, Respondent
Supervisor Eric Mar, Respondent
Supervisor Scott Wiener, Respondent
Supervisor Malia Cohen, Respondent
Judson True, Legislative Aide to President Chiu
Andrea Bruss, Legislative Aide to Supervisor Cohen
Jerry Threet, Deputy City Attorney

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
2012 FAX No. 215-554-7830
TDD/TTY No. (415) 554-5217
SAN FRANCISCO
ETHICS COMMISSION

ORDER OF DETERMINATION

September 3, 2011

BY _____

DATE THE DECISION ISSUED

August 23, 2011

PASTOR GAVIN v SUPERVISOR CHIU AND SUPERVISOR MAR (CASE NO. 11048)

FACTS OF THE CASE

Pastor Gavin and other anonymous complainants ("Complainants") allege that San Francisco Supervisor Eric Mar, Chair of the Land Use Committee of the Board of Supervisors, violated public meeting laws during the Land Use Committee meeting on May 24, 2011 when he allowed Supervisor David Chiu to introduce significant amendments to proposed legislation involving Parkmerced without providing copies of those amendments to the public and then voted on the amendments instead of continuing the item to a later meeting to provide the public opportunity to review them.

COMPLAINT FILED

On June 20, 2011, Complainants filed this complaint against Supervisor Mar, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

HEARING ON THE COMPLAINT

On August 23, 2011, Pastor Gavin presented Complainants' case to the Task Force. Lin-Shao Chin, legislative aide to Supervisor Mar, provided the response.

Pastor Gavin testified that May 24th was a dark day for the City and County of San Francisco when procedures were used at the Land Use Committee hearing and subsequent Board of Supervisors meeting which violated the Sunshine Ordinance. She said a week earlier, the San Francisco Civil Grand Jury reported that the Parkmerced Project's Mixed Use Program Development Agreement, for all its complexity, fails to mitigate the most significant risk it creates: the direct loss of statutory tenant rights by Parkmerced residents. At the Land Use meeting, Supervisor David Chiu asked committee members Supervisors Eric Mar, Malia Cohen, and Scott Wiener to add 14 pages of new revisions to the Development Agreement and forward it to the Board of Supervisors. No motion to continue the matter was made or voted on by the Committee. She said Supervisor Mar voted against adopting the amendments and he noted that there could be a possible Sunshine Ordinance violation involved. He was outvoted by Supervisors Cohen and Wiener on the motion to approve the amended item and refer it to the Board of Supervisors. Supervisor David

Campos echoed Supervisor Mar's Sunshine Ordinance violation concern at the full Board meeting later that day.

At both meetings, she said, the public, especially Parkmerced citizen tenants, were given only a two-page summary of Supervisor Chiu's newly proposed amendments to the Development Agreement and denied the opportunity to read the actual text of the 14 pages of amendments. She also said Deputy City Attorney Charles Sullivan told the Committee during the meeting that there was no need for additional public comment because the amendments were within the scope of the agreement noticed and the Committee had already heard comment from the public on the item. She said she disagreed with him because the item had been continued to the May 24th meeting only for purposes of considering four Environmental Impact Reports, whereas Supervisor Chiu's new revisions concern tenant rights. The 14 pages, she added, substantially change the Development Agreement and thus meet the requirement for additional public comment and continuation of the item vote to a later meeting.

Respondent Lin-Shao Chin testified that Supervisor Mar is not the appropriate focus of the complaint because the amendments were introduced by Supervisor Chiu and, moreover, Supervisor Mar was not in possession of the amendments before the meeting and was surprised by their introduction. She said she has seen no evidence that this complaint should be filed against Supervisor Mar. She noted that Supervisor Mar voted against the amendments, in support of the residents. She also testified that she was not aware of any attempt by Supervisor Mar to continue the item.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the introduction of 14 pages of proposed amendments without providing copies or adequate review time to members of the public should have prompted Supervisor Eric Mar, as Chair of the Committee, to try to continue the meeting, but instead the members proceeded to vote on the substance of the newly amended legislation. The Task Force further found that as the Chair of the Land Use Committee Supervisor Mar was an appropriate focus of the Complaint. The Task Force further noted that Supervisor Mar was heard several times during the Committee meeting stating that he wanted public comment over quickly and requesting members of the public not use the full amount of time provided for each speaker.

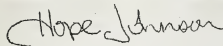
DECISION AND ORDER OF DETERMINATION

The Task Force finds that Supervisor Eric Mar violated Sunshine Ordinance Section 67.7(b) for not providing the public with copies of the amendments to the Development Agreement, which were provided to the policy body in connection with an agenda item; and Section 67.15(a) and (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments. The Task Force continues this complaint to the September 27, 2011 Task Force meeting and names Board President David Chiu and Land Use Committee members Supervisor Scott Wiener and Supervisor Malia Cohen as respondents to the original complaint.

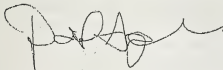
This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 23, 2011 by the following vote: (Knee/Costa)

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson

Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

- c: Pastor Gavin, Complainant
Supervisor Eric Mar, Respondent
Lin-Shao Chin, Respondent
Supervisor David Chiu
Supervisor Malia Cohen
Supervisor Scott Wiener
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

November 1, 2011

DATE THE DECISION ISSUED

September 27, 2011

PASTOR GAVIN v SUPERVISOR CHIU, SUPERVISOR WIENER, AND SUPERVISOR COHEN (CONTINUATION OF CASE NO. 11048)

FACTS OF THE CASE

On August 23, 2011, the Sunshine Ordinance Task Force ("Task Force") heard Complaint No. 11048, Pastor Gavin v. Supervisor Mar. The Task Force found that, during the May 24, 2011 Board of Supervisor's Land Use and Economic Development Committee meeting, San Francisco Supervisor Eric Mar, Chair of the Land Use Committee, violated several sections of the Sunshine Ordinance by failing to provide the public with copies of 14 pages of amendments to the Parkmerced Development Agreement, which were provided to the policy body by Board President David Chiu in connection with an agenda item, and by allowing the introduction of the last-minute and substantive changes to the relevant agenda item without adequate notice.

The Task Force continued the complaint to its September 27, 2011 meeting and named the other two Land Use Committee members, Supervisors Scott Wiener and Malia Cohen, and Board President David Chiu as respondents to the complaint.

COMPLAINT FILED

The original complaint was filed on June 20, 2011, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

HEARING ON THE COMPLAINT

On September 27, 2011, Pastor Gavin and her supporters presented their case to the Task Force. Judson True, legislative aide to President Chiu, Gillian Gillette, legislative aide to Supervisor Wiener, and Andrea Bruss, legislative aide to Supervisor Cohen, presented the response.

Pastor Gavin testified that she and her Parkmerced neighbors learned at the May 24th Land Use Committee meeting of the introduction of 14 pages of amendments to the Parkmerced Development Agreement. She said many residents did not know how the 14 pages correlated with the entire document. She also said they were not allowed to provide

public comment on a document that would directly affect their homes. Several of Pastor Gavin's supporters told the Task Force that members of the public were provided with only a two-page summary of the amendments, not the full 14 pages.

Pastor Gavin said it is chilling and disturbing for an American citizen and a San Francisco resident to watch the video of the meeting and see what transpired. She said every time she watches the tape she notices something new, such as Supervisor Cohen admitting that she had not seen the revisions prior to the meeting and that she only spoke briefly about it with Michael Yarney of the Office of Economic and Workforce Development.

Pastor Gavin noted that none of the Land Use Committee members had seen the revisions, only Board President Chiu and Deputy City Attorney Charles Sullivan who wrote the document. The issue, she said, is about the loss of homes for 5,000 residents, the destruction of 1,000 trees, habitat destruction, the violation of agenda requirements under the Sunshine Ordinance, and the unpatriotic way the elected officials behaved to push through the document to the Board of Supervisors which was meeting two hours later.

Mr. True said the agenda for the Land Use Committee on May 24, 2011, included a proposed ordinance approving the Parkmerced Development Agreement and a copy of the 200-page contract between the City and the developer. The contents of the revised 14 pages, he said, further strengthened the protections provided to residents. Mr. True said he personally distributed copies of the amendments as well as a two-page summary to whoever requested copies at both the Land Use meeting and the following full Board meeting. The Supervisors have to seek the advice of the City Attorney and in this case the advice was that the revisions were within the scope of the agreement that was noticed and could be forwarded to the full Board without the need for additional public comment. He added that changes to an underlying document do not trigger a continuance or public comment as was the case in several matters before the Supervisors such as the Hunters Point Shipyard project. In response to Task Force inquiries, Mr. True said he could think of no reason that the Committee could not have continued the hearing to provide opportunity for the public to review the amendments, other than the upcoming budget process.

Ms. Gillette said the Supervisors did not violate the Sunshine Ordinance by following the advice of the City Attorney. She said the Task Force appears to be suggesting it could cite a supervisor for an action the City Attorney has deemed legal. She said the Task Force cannot tell the Supervisors how to vote and what motions to make because the Supervisors are accountable only to the voters. She said the transcript of the Board meeting will show that statements made by Deputy City Attorney Cheryl Adams at the Committee meeting are reaffirmed by Deputy City Attorney Charles Sullivan, specifically that this is a revision to a contract. She said Deputy City Attorney Adams also added that the noticing was broad and did not require the need for additional public comment.

Ms. Bruss said Supervisor Cohen does not think she and the other Supervisors on the Land Use Committee violated the Sunshine Ordinance by not continuing the hearing on the agreement. She said copies of the amendments were made available to anyone who wanted the document. The Supervisors based their decisions on the advice of the City Attorney, she said.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony it received, the Task Force found that neither the members of the Land Use Committee nor the public had sufficient time to adequately review and analyze the 14 pages of amendments. The Task Force further found that the amendments worked a significant enough change in the meeting agenda to warrant a new notice and a continued meeting. Based on respondent Mr. True's testimony, the Task Force further found that the Land Use Committee had no reason that the hearing could not have been continued. The Task Force concluded that the 14 pages of amendments to the Development Agreement were not adequately noticed in the agenda. The Task Force further concluded that, given the late introduction of significant changes to the content of the Land Use Committee's meeting, Board President Chiu and members of the Committee should have continued the hearing so that it could be properly noticed as required under the Sunshine Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force found that President David Chiu, Supervisor Scott Wiener, and Supervisor Malia Cohen violated Sunshine Ordinance Section 67.7(b) for not providing the public with copies of the amendments to the Development Agreement which were provided to the policy body in connection with an agenda item, and Sections 67.15(a) and (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments. The two Orders of Determination in this complaint are to be referred to the Ethics Commission and the District Attorney for willful failure and official misconduct.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on September 27, 2011 by the following vote: (Washburn/Manneh)

Ayes: Snyder, Knee, Cauthen, Manneh, Washburn, Wolfe, Chan, Johnson

Excused: Costa, West

Absent: Knoebber



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Pastor Gavin, Complainant
Supervisor David Chiu
Supervisor Malia Cohen
Supervisor Scott Wiener
Judson True, legislative aide to President Chiu
Andrea Bruss, legislative aide to Supervisor Cohen
Gillian Gillette, legislative aide to Supervisor Wiener
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

Appendix A

Date: August 23, 2011

Item No. 1 & 2

File No. 11048

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

<input checked="" type="checkbox"/>	Pastor Gavin against Supervisor Chiu, Supervisor Mar
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____
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<input type="checkbox"/>	_____
<input type="checkbox"/>	_____

Completed by: Chris Rustom

Date: August 19, 2011

*This list reflects the explanatory documents provided

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sf.gov

MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: July 22, 2011
RE: *Complaint No. 11048, Pastor Gavin, et al. v. Supervisor Mar*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Pastor Gavin (an assumed name), as well as other anonymous complainants ("Complainants") allege that San Francisco Supervisor Eric Mar (the "Supervisor"), the chair of the Land Use Committee of the Board of Supervisors, violated public meetings laws when Supervisor David Chiu introduced amendments to legislation involving Park Merced during the May 24, 2011 committee meeting.

COMPLAINANT FILES COMPLAINT:

On June 20, 2011, Complainants filed this complaint against Mar, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

JURISDICTION

The Board of Supervisors is a policy body. Therefore the Task Force has jurisdiction to hear a complaint against it or one of its officers alleging violations of the public meetings laws.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.7 governs descriptions of agenda items for a public meeting.
- Section 67.7-1 deals with the notice to be provided by City agencies to residents regarding any activity that may affect their property or the neighborhood.

Sections 54050 et seq. of the Cal. Government Code (the "Brown Act")

- Section 54954.2 deals with posting of agendas and description of items in those agendas.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 2
RE: Complaint No. 11048, Pastor Gavin, et al. v. Supervisor Mar

APPLICABLE CASE LAW:

- *Phillips v. Seely* (1974) 43 Cal.App.3d 104, 120 ("where the subject matter to be considered is sufficiently defined to apprise the public of the matter to be considered and notice has been given in the manner required by law, the governing body is not required to give further special notice.").
- *Carlson v. Paradise Unified Sch. Dist.* (1971) 18 Cal.App.3d 196, 200 ("it is imperative that the agenda of the board's business be made public and in some detail so that the general public can ascertain the nature of such business.").
- The California Attorney General has concluded that, under Government Code § 54954.2, the agenda must include a sufficient description "to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body." See *The Brown Act: Open meetings for Local Legislative Bodies*.

ISSUES TO BE DETERMINED

Contested/Uncontested Facts:

Complainants' Allegations

Complainants allege that, during the May 24, 2011 meeting of the Land Use, Supervisor David Chiu introduced 14 pages of amendments to the development agreement between the City and the developers of the Park Merced project then being considered by the Committee. Complainants further allege that these changes to the development agreement during the meeting, without giving the public an opportunity to view them previously, was an egregious violation of the public's rights under sections 67.7 and 67.7-1 of the Sunshine Ordinance. Complainants do not allege facts that directly explain why the violation was that of Supervisor Mar.

The Supervisor's Response

The Supervisor does not dispute the above allegations. However, the Supervisor alleges that he received the proposed amendments at the same time as the public, opposed them publicly, and voted against them. The Supervisor further suggests that he is not the proper target of the complaint.

QUESTIONS THAT MAY ASSIST IN DETERMINING FACTS:

- What was the exact description of the item when it was on the meeting agenda of the Land Use Committee for consideration?
- Was notice of the proposed legislation mailed to residents of any specific geographic area that may have been affected by its passage?

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 3
RE: *Complaint No. 11048, Pastor Gavin, et al. v. Supervisor Mar*

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Were sections of the Sunshine Ordinance, Brown Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS

Under Section 67.7(a) of the Ordinance:

- Was the agenda description of the legislative item in question a "meaningful description"?

Under Section 67.7(b) of the Ordinance:

- Was the agenda description of the legislative item in question "sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item"?
- Was the agenda description of the legislative item in question "brief, concise and written in plain, easily understood English"?

Under Section 67.7-1 of the Ordinance:

- If notice of the legislative item was mailed to residents of a specific area, was the notice "brief, concise and written in plain, easily understood English"?

Under Section 54954.2 of the Brown Act:

- Was the agenda description of the legislative item in question a "brief general description"?
- Was the agenda description sufficient "to apprise the public of the matter to be considered"?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

MEMORANDUM

TO: Sunshine Task Force
DATE: July 22, 2011
PAGE: 4
RE: *Complaint No. 11048, Pastor Gavin, et al. v. Supervisor Mar*

**ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN
FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED**

Section 67.7 (a): "At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting."

Section 67.7 (b): "A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours."

Section 67.7-1 (a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

SECTIONS 54950.ET SEQ. OF THE CAL. GOVERNMENT CODE

Section 54954.2(a) provides, in pertinent part:

"At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words."

Jun 21 11 01:50p

Sunshine Ord. Task Force

415-554-7611

p.3



SUNSHINE ORDINANCE TASK FORCE
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
 Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

Land Use Commission

Name of individual contacted at Department or Commission

Supervisor Mear

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting

06/24/2011

Sunshine Ordinance Section

67.7-1 and 67.7

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were
violated under sections 67.7-1 Public Notice
and sections (a) and (b) and Section 67.7 Agenda
Requirements Sections (a), (b), (c) and (d).

Do you want a public hearing before the Sunshine Ordinance Task Force?



yes



no

Do you also want a pre-hearing conference before the Complaint Committee?



yes



no

(Optional)

Name

Paster Gavin

Address

Grijalva Dr

Telephone No.

E-Mail Address

Date

June 20, 2011

Signature

I request confidentiality of my personal information.



yes



no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

07/31/08

Jun 21 11 01:50p

Sunshine Ord. Task Force

415-554-76

p2

Grijalva Drive
San Francisco, CA 94132

June 21, 2011

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett PL - Room 244
San Francisco, CA 94102

RE: Hearing Request

Dear Sunshine Task Force:

On May 24, 2011 during the Land Use Commission meeting, Board President David Chiu introduced 14 new pages that were to be added to the development agreement the city has with the developers at Parkmerced

By changing document that impacts the 8,000 residents of Parkmerced and not giving them or the public the opportunity to view the new information was an egregious violation of our rights under the Sunshine Ordinance, sections 67.7-1 Public Notice and Agenda Requirements 67.7. We have filed a complaint with the Sunshine Task Force to ask for a hearing.

My neighbors and I have filed a complaint with your department. We do not wish to have any of our information released into the public records and wish remain anonymous due to concerns regarding retaliation until the hearing.

If you have any questions please contact me via the United States mail. I look forward to hearing from you.

Sincerely,


Pastor Gavin

Jul 05 11 11:08a

Sunshine Ord. Task Force

415-554-7854

p2

200 Grijalva Drive
San Francisco, CA 94132

July 5, 2011

Mr. Chris Ruston
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Pl., Room 244
San Francisco, CA 94102

RE: Correct Date of Sunshine Ordinance Violation

Dear Mr. Ruston:

In regards to our conversation this morning about the date of the scheduled hearing regarding the Land Use Committee meeting, I realized there was an error in the date of the alleged incident on the complaint.

The correct date regarding the Land Use Meeting was on May 24, 2011 not June 24, 2011. I apologize for the error and if you need to contact me further please do not hesitate to call me. My telephone number is (415) 334-2010. However, I am requesting that my telephone number remain confidential.

Once again the date of the alleged violation of the sunshine ordinance was on May 24, 2011. I look forward to hearing from you and thank you for your assistance.

Sincerely,



Pastor Gavin

Jun 21 11 01:50p

Sunshine Ord. Task Force

415-554-76

p4



SUNSHINE ORDINANCE TASK FORCE
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
 Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Land Use Commission

Name of Individual contacted at Department or Commission Supervisor Mar

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting 06/24/2011

Sunshine Ordinance Section 67.7-1 and 67.7

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were
violated under Sections: 67.7-1(a) and (b), and
Agenda Requirements Section 67.7(a), (b), (c), (d)

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no

Do you also want a pre-hearing conference before the Complaint Committee? ☐ yes ☒ no

(Optional)¹

Name _____

Address _____

Telephone No. 415 _____

E-Mail Address _____

Date 6/20/11

Signature _____

I request confidentiality of my personal information. ☒ yes ☐ no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Jun 21 11 01:50p

Sunshine Ord. Task Force

415-554-76

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SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

Land Use Commission

Name of individual contacted at Department or Commission

Supervisor Mar

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting

06/24/2011

Sunshine Ordinance Section

67.7-1 and Section 67.7

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were violated under Section 67.1 Public Notice Requirements

Sections (a) and (b), and Section 67.7

Agenda Requirements Sections (a), (b), (c) and (d)

Do you want a public hearing before the Sunshine Ordinance Task Force?

☒☐ DC

Do you also want a pre-hearing conference before the Complaint Committee?

☒ no

(Optional)

Name _____

Address

Telephone No. _____

E-Mail Address

Date _____

06/20/2011

Signature _____

I request confidentiality of my personal information.

NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

07/31/08

Jun 21 11 01:50p

Sunshine Ord. Task Force

415-554-76...

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SUNSHINE ORDINANCE TASK FORCE
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
 Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Land Use Commission

Name of individual contacted at Department or Commission Supervisor Mar

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting 06/24/2011

Sunshine Ordinance Section 67.7-1 and 67.7
 (If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were
violated under Section 67.7-1 Public Notice
Requirements and Section 67.7 Agenda Requirements
Sections (a), (b), (c), and (d).

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no

Do you also want a pre-hearing conference before the Complaint Committee? ☒ yes ☐ no

(Optional)¹

Name _____ Address _____

Telephone No. _____ E-Mail Address _____

Date 6/20/11 _____

I request confidentiality of my personal information. ☒ yes ☐ no

Signature

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Jun 21, 11:01:50p

Sunshine Ord. Task Force

415-554-76

p.7



SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

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http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

Land Use Commission

Name of Individual contacted at Department or Commission

Supervisor Mar☐ Alleged violation public records access☒ Alleged violation of public meeting. Date of meeting06/24/2011

Sunshine Ordinance Section

67.7-1 and 67.7

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were
violated under Section 67.7-1 Public Notice
Requirements and Section 67.7 Agenda Requirements
Sections (a), (b), (c), and (d)

Do you want a public hearing before the Sunshine Ordinance Task Force?



yes

☐ no

Do you also want a pre-hearing conference before the Complaint Committee?



yes

☒ no(Optional)¹

Name

Address

Telephone No.

E-Mail Address

Date

06/20/2011

Signature

I request confidentiality of my personal information.



yes



no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

07/21/08

Jun 21 11 01:50p

Sunshine Ord. Task Force

415-554-7611

p8



SUNSHINE ORDINANCE TASK FORCE
 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
 Tel. (415) 554-7724; Fax (415) 554-7854
 http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Land Use Commission

Name of individual contacted at Department or Commission Supervisor Avalos Mar

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting 06/24/2011

Sunshine Ordinance Section 67.7-1 and 67.7

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were violated under Sections 67.7-1, Public Notice Requirements Sections (a) and (b), Section 67.7 Agenda Requirements Sections (a), (b), (c) and (d).

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no

Do you also want a pre-hearing conference before the Complaint Committee? ☐ yes ☒ no

(Optional)

Name _____ Address _____

Telephone No. _____ E-Mail Address _____

Date 06/20/2011 _____

Signature

I request confidentiality of my personal information. ☒ yes ☐ no

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6/7/11/08

Jun 21 11 01:50p

Sunshine Ord. Task Force

415-554-76

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SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

Land Use Commission

Name of Individual contacted at Department or Commission

Supervisor Avalos Mar☐ Alleged violation public records access☒ Alleged violation of public meeting. Date of meeting06/24/2011

Sunshine Ordinance Section

67.7-1 and 67.7

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were
violated under Sections 67.7-1, Public Notice
Requirements and Section 67.7 Agenda Requirements
Sections (a), (b), (c) and (d)

Do you want a public hearing before the Sunshine Ordinance Task Force?



yes



no

Do you also want a pre-hearing conference before the Complaint Committee?



yes



no

(Optional)¹

Name

Address

Telephone No.

E-Mail Address

Date

06/20/2011

I request confidentiality of my personal information.



yes



no

Signature

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Jun 21 11 01:50p

Sunshine Ord. Task Force

415-554-76

p10



SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

Land Use Commission

Name of individual contacted at Department or Commission

Supervisor Andres Mar

Alleged violation public records access



Alleged violation of public meeting. Date of meeting

06/24/2011

Sunshine Ordinance Section

67.7-1 and 67.7

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were
violated under sections 67.7-1 Public Notice
sections (a) and (b) and Section 67.7 Agenda
Requirements sections (a), (b), (c); and (d)

Do you want a public hearing before the Sunshine Ordinance Task Force?



yes



no

Do you also want a pre-hearing conference before the Complaint Committee?



yes



no

(Optional)¹

Name

Address

Telephone No.

E-Mail Address

Date

06/20/2011

Signature

I request confidentiality of my personal information.



yes



no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Jun 21 11 01:51p

Sunshine Ord. Task Force

415-554-7622

p.11



SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINTComplaint against which Department or Commission Land Use CommissionName of individual contacted at Department or Commission Supervisor Mar☐ Alleged violation public records access☒ Alleged violation of public meeting. Date of meeting 06/24/2011Sunshine Ordinance Section 67.7-1 and 67.7

(if known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were
violated under Sections 67.7-1 Public Notice
Sections (a) and (b) and Section 67.7 Agenda
Requirements Sections (a), (b), (c) and (d)

Do you want a public hearing before the Sunshine Ordinance Task Force?

☒ yes ☐ no

Do you also want a pre-hearing conference before the Complaint Committee?

☐ yes ☒ no

(Optional)

Name _____ Address _____

Telephone No. _____ E-Mail Address _____

Date 06/20/2011 _____I request confidentiality of my personal information. ☒ yes ☐ no

Signature

NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

07/11/01

Jun 21 11 01:51p

Sunshine Ord. Task Force

415-554-76

p.12



SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

Land Use Commission

Name of individual contacted at Department or Commission

Supervisor Mar☐ Alleged violation public records access☒ Alleged violation of public meeting. Date of meeting06/24/2011

Sunshine Ordinance Section

67.7-1 and 67.7

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

My rights under the Sunshine Ordinance were
violated under sections 67.7-1 Public Notice
and Section 67.7 Agenda Requirements
Sections (a), (b), (c) and (d).

Do you want a public hearing before the Sunshine Ordinance Task Force?

☒ yes ☐ no

Do you also want a pre-hearing conference before the Complaint Committee?

☐ yes ☒ no(Optional)¹

Name

Address

Telephone No.

E-Mail Address

Date

Signature

I request confidentiality of my personal information.

☒ yes☐ no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).



Myma Melgar/BOS/SFGOV

06/24/2011 04:47 PM

To Chris Ruston/BOS/SFGOV@SFGOV

cc Joseph Smooke/BOS/SFGOV@SFGOV, Les Hilger
<les.hilger@sfgov.org>, Rick
Caldeira/BOS/SFGOV@SFGOV, Angela

bcc

Subject Re: Fw: Sunshine Complaint Received: #11048_Pastor
Gavin v Supervisor David Chiu, Supervisor Eric Mar

Mr. Ruston,

A thorough search of our records indicates no records of prior requests by Pastor Gavin. In fact, in reading this complaint, it is unclear to us what exactly this constituent is looking for. If you can provide us with more specific guidance, we would be happy to help him in his search.

The letter written by Pastor Gavin complains about the introduction of 14 pages of amendments by Supervisor Chiu to the development agreement for Parkmerced. This office received those amendments at the same time as the public did during the hearing at the Land Use Committee on May 23rd. As a matter of record, Supervisor Mar voted against this item and publicly stated that he was disturbed by the lack of transparency in the process. It is unclear to us why Supervisor Mar is the target of this complaint, as we had nothing to do with the amendments named in the complaint, and in fact the Supervisor opposed them.

Myma Melgar
Legislative Aide
Office of Supervisor Eric Mar
San Francisco District 1
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco CA 94102
(415)554-7412

Date: September 27, 2011

Item No. 8
File No. 11048

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

<input checked="" type="checkbox"/>	Pastor Gavin v Supervisors Chiu, Wiener and Cohen
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Completed by: Chris Rustom

Date: Sept. 22, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
September 3, 2011

DATE THE DECISION ISSUED
August 23, 2011

PASTOR GAVIN v SUPERVISOR CHIU AND SUPERVISOR MAR (CASE NO. 11048)

FACTS OF THE CASE

Pastor Gavin and other anonymous complainants ("Complainants") allege that San Francisco Supervisor Eric Mar, Chair of the Land Use Committee of the Board of Supervisors, violated public meeting laws during the Land Use Committee meeting on May 24, 2011 when he allowed Supervisor David Chiu to introduce significant amendments to proposed legislation involving Parkmerced without providing copies of those amendments to the public and then voted on the amendments instead of continuing the item to a later meeting to provide the public opportunity to review them.

COMPLAINT FILED

On June 20, 2011, Complainants filed this complaint against Supervisor Mar, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

HEARING ON THE COMPLAINT

On August 23, 2011, Pastor Gavin presented Complainants' case to the Task Force. Lin-Shao Chin, legislative aide to Supervisor Mar, provided the response.

Pastor Gavin testified that May 24th was a dark day for the City and County of San Francisco when procedures were used at the Land Use Committee hearing and subsequent Board of Supervisors meeting which violated the Sunshine Ordinance. She said a week earlier, the San Francisco Civil Grand Jury reported that the Parkmerced Project's Mixed Use Program Development Agreement, for all its complexity, fails to mitigate the most significant risk it creates: the direct loss of statutory tenant rights by Parkmerced residents. At the Land Use meeting, Supervisor David Chiu asked committee members Supervisors Eric Mar, Malia Cohen, and Scott Wiener to add 14 pages of new revisions to the Development Agreement and forward it to the Board of Supervisors. No motion to continue the matter was made or voted on by the Committee. She said Supervisor Mar voted against adopting the amendments and he noted that there could be a possible Sunshine Ordinance violation involved. He was outvoted by Supervisors Cohen and Wiener on the motion to approve the amended item and refer it to the Board of Supervisors. Supervisor David

Campos echoed Supervisor Mar's Sunshine Ordinance violation concern at the full Board meeting later that day.

At both meetings, she said, the public, especially Parkmerced citizen tenants, were given only a two-page summary of Supervisor Chiu's newly proposed amendments to the Development Agreement and denied the opportunity to read the actual text of the 14 pages of amendments. She also said Deputy City Attorney Charles Sullivan told the Committee during the meeting that there was no need for additional public comment because the amendments were within the scope of the agreement noticed and the Committee had already heard comment from the public on the item. She said she disagreed with him because the item had been continued to the May 24th meeting only for purposes of considering four Environmental Impact Reports, whereas Supervisor Chiu's new revisions concern tenant rights. The 14 pages, she added, substantially change the Development Agreement and thus meet the requirement for additional public comment and continuation of the item vote to a later meeting.

Respondent Lin-Shao Chin testified that Supervisor Mar is not the appropriate focus of the complaint because the amendments were introduced by Supervisor Chiu and, moreover, Supervisor Mar was not in possession of the amendments before the meeting and was surprised by their introduction. She said she has seen no evidence that this complaint should be filed against Supervisor Mar. She noted that Supervisor Mar voted against the amendments, in support of the residents. She also testified that she was not aware of any attempt by Supervisor Mar to continue the item.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the introduction of 14 pages of proposed amendments without providing copies or adequate review time to members of the public should have prompted Supervisor Eric Mar, as Chair of the Committee, to try to continue the meeting, but instead the members proceeded to vote on the substance of the newly amended legislation. The Task Force further found that as the Chair of the Land Use Committee Supervisor Mar was an appropriate focus of the Complaint. The Task Force further noted that Supervisor Mar was heard several times during the Committee meeting stating that he wanted public comment over quickly and requesting members of the public not use the full amount of time provided for each speaker.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Supervisor Eric Mar violated Sunshine Ordinance Section 67.7(b) for not providing the public with copies of the amendments to the Development Agreement, which were provided to the policy body in connection with an agenda item; and Section 67.15(a) and (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments. The Task Force continues this complaint to the September 27, 2011 Task Force meeting and names Board President David Chiu and Land Use Committee members Supervisor Scott Wiener and Supervisor Malia Cohen as respondents to the original complaint.

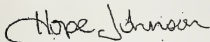
CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

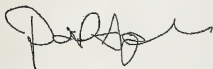
This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 23, 2011 by the following vote: (Knee/Costa)

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson

Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

- c: Pastor Gavin, Complainant
Supervisor Eric Mar, Respondent
Lin-Shao Chin, Respondent
Supervisor David Chiu
Supervisor Malia Cohen
Supervisor Scott Wiener
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

Exhibit 1



City and County of San Francisco Meeting Agenda

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Land Use and Economic Development Committee

Members: Eric Mar, Malla Cohen, Scott Wiener

Clerk: Alisa Somera (415) 554-4447

Tuesday, May 24, 2011

9:00 AM

City Hall, Committee Room 263

Special Meeting

Note: Each item on the Consent or Regular agenda may include the following documents:

- 1) Legislation*
- 2) Budget and Legislative Analyst report*
- 3) Department or Agency cover letter and/or report*
- 4) Public correspondence*

These items will be available for review at City Hall, Room 244, Reception Desk.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding City representatives, except that public speakers using translation assistance will be allowed to testify for twice the amount of the public testimony time limit. If simultaneous translation services are used, speakers will be governed by the public testimony time limit applied to speakers not requesting translation assistance. Members of the public who want a document placed on the overhead for display should clearly state such and subsequently remove the document when they want the screen to return to live coverage of the meeting.

AGENDA CHANGES

REGULAR AGENDA

1. 110564 [Transfer Agreement - Alice Griffith Public Housing Opportunity Center]
Sponsor: Mayor
Resolution approving and authorizing the transfer of a modular structure located at 2525 Griffith Street, commonly known as the Alice Griffith Opportunity Center, by the City and County of San Francisco, acting by and through the Mayor's Office of Housing to the Housing Authority of the City and County of San Francisco, for the purpose of continuing resident and community events and the provision of resident services benefitting Alice Griffith Public Housing residents.

5/3/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee.

2. 110300 [Development Agreement - Parkmerced]**Sponsor: Elsbernd**

Ordinance approving a Development Agreement between the City and County of San Francisco and Parkmerced Investors, LLC, for certain real property located in the Lake Merced District of San Francisco, commonly referred to as Parkmerced, generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west; making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan and with the eight priority policies of Planning Code Section 101.1(b); and waiving certain provisions of Administrative Code Chapter 56. (Planning Department)

(Economic Impact.)

3/15/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee.

4/6/11; REFERRED TO DEPARTMENT. Referred to the Controller for review and report.

5/16/11; CONTINUED. Heard in Committee. Speakers: Supervisor Sean Elsbernd (Board of Supervisors; Michael Yarne (Economic and Workforce Development); Marlena Byrne (City Attorney's Office); presented information concerning the matter and answered questions raised throughout the hearing. John Huang; Arne Larsen; James Ruligomez; Jeanie Scott; Bruce Kennedy; Mike Smith; Elizabeth Keith; Jim Cook; Bill Blackwell; Adrian Simi; Matt Chamberlain; Nicolo Barozzi; Tim Colen; Carol Koppel; Catherine Wong; Anna-Marie Bratton; Danny Campbell; Javier Flores; Jeff Rock; Manuel Flores; spoke in support of the matter. Aaron Goodman; Lora Traveler; Joey Foyin; Kathy Lims; Michael Russum; Bernie Choden; Healan Ting; Hiroshi Fukuda; Dean Preston; George Wooding; Ted Gulliksson; Larry Jones; Mitchell Omerberg; spoke in opposition to the matter.

Continued to May 24, 2011.

The Chair will entertain a motion to send this item forward as a Committee Report to the full Board on May 24, 2011.

3. 110301 [Planning Code - Special Use District - Parkmerced]**Sponsor: Elsbernd**

Ordinance amending the San Francisco Planning Code by amending Sections 102.5 and 201 to include the Parkmerced Zoning Districts; adding Section 249.64 to establish the Parkmerced Special Use District; amending Planning Code Section 270 to refer to the Parkmerced Special Use District; and adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the priority policies of Planning Code Section 101.1. (Planning Commission)

(Economic Impact.)

3/4/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee.

4/6/11; REFERRED TO DEPARTMENT. Referred to the Controller for review and report.

5/16/11; AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE. Heard in Committee. Speakers: Supervisor Sean Elsbernd (Board of Supervisors; Michael Yarne (Economic and Workforce Development); Marlena Byrne (City Attorney's Office); presented information concerning the matter and answered questions raised throughout the hearing. John Huang; Arne Larsen; James Ruligomez; Jeanie Scott; Bruce Kennedy; Mike Smith; Elizabeth Keith; Jim Cook; Bill Blackwell; Adrian Simi; Matt Chamberlain; Nicolo Barozzi; Tim Colen; Carol Koppel; Catherine Wong; Anna-Marie Bratton; Danny Campbell; Javier Flores; Jeff Rock; Manuel Flores; spoke in support of the matter. Aaron Goodman; Lora Traveler; Joey Foyin; Kathy Lims; Michael Russum; Bernie Choden; Healan Ting; Hiroshi Fukuda; Dean Preston; George Wooding; Ted Gulliksson; Larry Jones; Mitchell Omerberg; spoke in opposition to the matter.

5/16/11; CONTINUED AS AMENDED. Continued to May 24, 2011.

The Chair will entertain a motion to send this item forward as a Committee Report to the full Board on May 24, 2011.

4. 110302 [Planning Code - Zoning Map Amendments - Parkmerced]**Sponsor: Elsbernd**

Ordinance amending the San Francisco Planning Code by amending Sectional Maps ZN13, HT13, and SU13 of the Zoning Map of the City and County of San Francisco to reflect the Parkmerced Special Use District; adopting findings, including environmental findings, Section 302 findings, and findings of consistency with the General Plan and the priority policies of Planning Code Section 101.1. (Planning Commission)

(Economic Impact.)

3/4/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee. 5/6/2011 - Notice was mailed.

4/8/11; REFERRED TO DEPARTMENT. Referred to the Controller for review and report.

5/16/11; AMENDED. Heard in Committee. Speakers: Supervisor Sean Elsbernd (Board of Supervisors; Michael Yarne (Economic and Workforce Development); Marlana Byrne (City Attorney's Office); presented information concerning the matter and answered questions raised throughout the hearing. John Huang; Arne Larsen; James Ruizgomez; Jeanie Scott; Bruce Kennedy; Mike Smith; Elizabeth Keith; Jim Cook; Bill Blackwell; Adrian Simi; Matt Chamberlain; Nicole Barozzi; Tim Cole; Carol Koppel; Catherine Wong; Anna-Marie Bratton; Danny Campbell; Javier Flores; Jeff Rock; Manuel Flores; spoke in support of the matter. Aaron Goodman; Lora Traveler; Joey Foyin; Kathy Lims; Michael Russom; Bernie Choden; Healan Ting; Hiroshi Fukuda; Dean Preston; George Wooding; Ted Gullickson; Larry Jones; Mitchell Omerberg; spoke in opposition to the matter.

5/16/11; CONTINUED AS AMENDED. Continued to May 24, 2011.

The Chair will entertain a motion to send this item forward as a Committee Report to the full Board on May 24, 2011.

5. 110303 [General Plan Amendment - Parkmerced]**Sponsor: Elsbernd**

Ordinance amending the San Francisco General Plan by amending the Urban Design Element Height Map with respect to the Parkmerced site; adopting findings, including environmental findings and findings of consistency with the General Plan and Planning Code Section 101.1. (Planning Commission)

(Economic Impact.)

3/4/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee. 5/6/2011 - Notice was published, mailed and posted.

4/8/11; REFERRED TO DEPARTMENT. Referred to the Controller for review and report.

5/16/11; AMENDED. Heard in Committee. Speakers: Supervisor Sean Elsbernd (Board of Supervisors; Michael Yarne (Economic and Workforce Development); Marlana Byrne (City Attorney's Office); presented information concerning the matter and answered questions raised throughout the hearing. John Huang; Arne Larsen; James Ruizgomez; Jeanie Scott; Bruce Kennedy; Mike Smith; Elizabeth Keith; Jim Cook; Bill Blackwell; Adrian Simi; Matt Chamberlain; Nicole Barozzi; Tim Cole; Carol Koppel; Catherine Wong; Anna-Marie Bratton; Danny Campbell; Javier Flores; Jeff Rock; Manuel Flores; spoke in support of the matter. Aaron Goodman; Lora Traveler; Joey Foyin; Kathy Lims; Michael Russom; Bernie Choden; Healan Ting; Hiroshi Fukuda; Dean Preston; George Wooding; Ted Gullickson; Larry Jones; Mitchell Omerberg; spoke in opposition to the matter.

5/16/11; CONTINUED AS AMENDED. Continued to May 24, 2011.

The Chair will entertain a motion to send this item forward as a Committee Report to the full Board on May 24, 2011.

ADJOURNMENT

IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to the City, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of the Board of Supervisors. Any written comments should be sent to: Committee Clerk of the Land Use Committee, San Francisco Board of Supervisors, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the committee clerk by that time may be taken directly to the hearing at the location above.

NOTE:

Pursuant to Government Code Section 65009, the following notice is hereby given: If you challenge, in court, the general plan amendments or planning code and zoning map amendments described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

LEGISLATION UNDER THE 30-DAY RULE

(Not to be considered at this meeting)

Rule 5.40 provides that when an ordinance or resolution is introduced which would CREATE OR REVISE MAJOR CITY POLICY, the committee to which the legislation is assigned shall not consider the legislation until at least thirty days after the date of introduction. The provisions of this rule shall not apply to the routine operations of the departments of the City or when a legal time limit controls the hearing timing. In general, the rule shall not apply to hearings to consider subject matter when no legislation has been presented, nor shall the rule apply to resolutions which simply URGE action to be taken.

110482 [Planning Code - Miscellaneous Technical Amendments]

Ordinance amending the San Francisco Planning Code to: 1) correct clerical errors, make language revisions and update Sections 121.2, 134, 136.1, 142, 185, 201, 204.1, 204.2, 205, 205.1, 205.3, 207.2, 209.3, 217, 243, 303, 309, 311, 312, 317, 602.25, 602.26, 607.1, and various Sections and Tables in Articles 7 and 8; and 2) adopting findings, including findings under the California Environmental Quality Act, Planning Code Section 302 findings, and findings of consistency with the General Plan and Planning Code Section 101.1. (Planning Commission)

4/28/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

110547 [Zoning Map Amendments - Washington-Broadway Special Use District 1; Waterfront Special Use Districts 2 and 3; Special Districts for Sign Illumination; and Special Districts for Scenic Streets]

Sponsor: Chiu

Ordinance amending Sheets SU01, SS01, and SS02 of the San Francisco Zoning Map to: 1) add blocks and lots to the Washington-Broadway Special Use District 1; 2) add blocks to the Waterfront Special Use District 2; 3) delete blocks and add lots to the Waterfront Special Use District 3; 4) make the boundaries of the Special District for Sign Illumination on Broadway co-extensive with the Broadway Neighborhood Commercial District; 5) delete the Van Ness Special District for Sign Illumination; and 6) add The Embarcadero from Taylor Street to Second Street to the Special District for Scenic Streets; adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

5/3/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

5/12/11; REFERRED TO DEPARTMENT. Referred to the Planning Department for environmental review; Planning Commission for public hearing and recommendation; and Small Business Commission for review and recommendation.

110548 [Planning Code - Zoning - Uses, Signs, Building Features, Floor Area Ratio, Parking, and Compliance in Specified Use Districts]

Sponsor: Chiu

Ordinance amending the San Francisco Planning Code by repealing Sections 136.2, 136.3, 158, 187, 249.15, 263.2, 263.3, 602.25, 602.26, 607.3, and 607.4 and amending various other Sections to: 1) increase the amount of principally permitted parking spaces for dwellings in RC-4 and C-3 Districts; 2) make off-street parking requirements in the Van Ness Special Use District and RC-3 Districts consistent with those of RC-4 Districts; 3) eliminate minimum parking requirements for the Chinatown Mixed Use Districts and North Beach Neighborhood Commercial Districts; 4) allow exceptions from required parking under specified circumstances; 5) amend the restrictions on off-street parking rates and extend them to additional zoning districts; 6) revise sign, awning, canopy and marquee controls in specified zoning districts; 7) increase the permitted use size for limited corner commercial uses in RTO and RM districts, and allow reactivation of lapsed limited commercial uses in R Districts; 8) revise the boundaries of and modify parking and screening requirements in the Washington-Broadway and Waterfront Special Use Districts; 9) modify controls for uses and accessory uses in Commercial and Residential-Commercial Districts; 10) permit certain exceptions from exposure and open space requirements for historic buildings; and 11) modify conformity requirements in various use districts; adopting findings, including environmental findings, Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

5/3/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

5/12/11; REFERRED TO DEPARTMENT. Referred to the Planning Department for environmental review; Planning Commission for public hearing and recommendation; and Small Business Commission for review and recommendation.

110624 [General Plan Amendments - Executive Park Subarea Plan]

Ordinance amending the San Francisco General Plan by amending the Executive Park Subarea Plan of the Bayview Hunters Point Area Plan, the Land Use Index and maps and figures in various elements and adopting findings, including environmental findings and findings of consistency with the General Plan and Planning Code Section 101.1. (Planning Commission)

5/11/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

110625 [Zoning - Establishment of the Executive Park Special Use District and Special Height and Bulk Provisions and Permit Review Procedures for the Special Use District]

Ordinance amending the San Francisco Planning Code by adding Section 249.54 to establish the Executive Park Special Use District; adding Section 263.27 to establish Special Height Provisions for the Executive Park Special Use District and the 65/240 EP Height and Bulk District; amending Table 270 to provide that the Table is not applicable to the Executive Park Special Use District; and adding Section 309.2 to establish Permit Review Procedures in the Executive Park Special Use District; adopting findings, including environmental findings, Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1. (Planning Commission)

5/11/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

110626 [Zoning Map Amendments - Executive Park Subarea Plan Area]

Ordinance amending the San Francisco Planning Code by amending Sectional Maps SU10 of the Zoning Map of the City and County of San Francisco to establish the Executive Park Special Use District; amending Sectional Map HT10 to establish the 65/240-EP Height and Bulk District; amending Sectional Map ZN09 to change certain Executive Park parcels from C-2(Community Business) and M-1(Light Industrial) to RC-3(Residential-Commercial Combined, Medium Density); adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1. (Planning Commission)

5/11/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

110627 [General Plan Amendment - Community Safety Element]

Ordinance amending the San Francisco General Plan by amending the Community Safety Element to reference the most recent Hazard Mitigation Plan; and making findings, including findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1, and environmental findings. (Planning Department)

110657 [Building Code - Permit Exemption for Cartouches]

Sponsor: Wiener

Ordinance amending the Building Code of the City and County of San Francisco Section 106A.2 to exempt cartouches from permit requirements; and adopting environmental findings.

5/17/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

Meeting Procedures

The Board of Supervisors is the legislative body of the City and County of San Francisco. The Board has several standing committees where ordinances and resolutions are the subject of hearings at which members of the public are urged to testify. The full Board does not hold a second public hearing on measures which have been heard in committee.

Board procedures do not permit: 1) persons in the audience to vocally express support or opposition to statements by Supervisors or by other persons testifying; 2) ringing and use of cell phones, pagers, and similar sound-producing electronic devices; 3) bringing in or displaying signs in the meeting room; 4) standing in the meeting room.

The public is encouraged to testify at Committee meetings and to write letters to the Clerk of the Board or to Supervisors: 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

LAPTOP COMPUTER FOR PRESENTATIONS: Contact City Hall Media Services at (415) 554-7490 to coordinate the use of the laptop computer for presentations. Presenters should arrive 30 minutes prior to the meeting to test their presentations on the computer.

AGENDA PACKET: Available for review in Clerk's Office, Room 244, City Hall, and on the internet at <http://www.sfbos.org/meetings>. Meetings are cablecast on SF Cable 26. For DVD copies and scheduling call (415) 554-4188.

LANGUAGE INTERPRETERS: Requests must be received at least 48 hours in advance of the meeting to help ensure availability. Contact Madeleine Licavoli at (415) 554-7722. **AVISO EN ESPAÑOL:** La solicitud para un traductor debe recibirse antes de mediodía de el viernes anterior a la reunion. Llame a Erasmo Vazquez (415) 554-4909.

翻譯 必須在會議前最少四十八小時提出要求
請電 (415) 554-7719

Disability Access

The Legislative Chamber (Room 250) and the Committee Room (Room 263) in City Hall are wheelchair accessible.

Meetings are real-time captioned and are cablecast open-captioned on SF Cable 26. Assistive listening devices for the Legislative Chamber are available upon request at the Clerk of the Board's Office, Room 244. Assistive listening devices for the Committee Room are available upon request at the Clerk of the Board's Office, Room 244 or in the Committee Room. To request sign language interpreters, readers, large print agendas or other accommodations, please contact Madeleine Licavoli at (415) 554-7722 or (415) 554-5227 (TTY). Requests made at least 48 hours in advance of the meeting will help to ensure availability.

The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485.

There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and

Grove Street.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to perfumes and various other chemical-based scented products. Please help the City to accommodate these individuals.

Know Your Rights Under The Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact by mail the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102, by phone at (415) 554-7724, by fax at (415) 554-7854 or by email at sotf@sfgov.org

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code Sec. 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

Exhibit 2

File No. 110300Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date May 24, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 125 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER

(Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Planning Commission Motion Nos. 18269, 18270, 18271, 18272 & 18273
<input checked="" type="checkbox"/>	<input type="checkbox"/>	California Environmental Quality Act Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mitigation Monitoring and Reporting Program
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Development Agreement, dtd 5/20/2011
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Infrastructure Report, dtd 1/26/2011
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Design Standards and Guidelines, dtd 10/14/10
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sustainability Plan, dtd 1/26/11
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Vision Plan, dtd 10/14/10
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Transportation Plan, dtd 10/7/10
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sustainability Plan, dtd 1/26/11
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Draft Environmental Impact Report

Completed by: Alisa SomeraDate May 20, 2011

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Development Agreement - Parkmerced]

Ordinance approving a Development Agreement between the City and County of San Francisco and Parkmerced Investors, LLC, for certain real property located in the Lake Merced District of San Francisco, commonly referred to as Parkmerced, generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west; making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan and with the eight priority policies of Planning Code Section 101.1(b); and waiving certain provisions of Administrative Code Chapter 56.

NOTE: Additions are single-underline italics Times New Roman;
deletions are ~~strike-through italics Times New Roman~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough-normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Project Findings. The Board of Supervisors makes the following findings:

(a) California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.

(b) Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth certain procedures for the processing and approval of development agreements in the City and County of San Francisco (the "City").

(c) Parkmerced Investors LLC, a Delaware limited liability company ("Developer") is the owner of that certain approximately 152 acre site located in the Lake Merced District in San Francisco and commonly known as "Parkmerced" (the "Project Site"). The Project Site is

1 generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the
2 north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south,
3 and Lake Merced Boulevard to the west.

4 (d) Developer filed an application with the City's Planning Department for approval
5 of a development agreement relating to the Project Site under Chapter 56. Developer also
6 filed applications with the Department to (a) amend the City's Planning Code to create the
7 Parkmerced Special Use District, (b) amend the City's General Plan to change applicable
8 height and bulk classifications, and (c) amend applicable zoning maps.

9 (e) Developer has proposed a long-term mixed-use development program to
10 comprehensively replan and redesign the Project Site (the "Project"). The Project will, upon
11 completion, increase residential density, provide a neighborhood core with new commercial
12 and retail services, reconfigure the street network and public realm, improve and enhance the
13 open space amenities, modify and extend existing neighborhood transit facilities, and improve
14 utilities within the Project Site, all as further described in the proposed development
15 agreement, a copy of which is on file with the Clerk of the Board in File No. 110300 (the
16 "Development Agreement").

17 (f) The Project includes the retention of approximately half of the existing
18 apartments at the Project Site. The remaining half would be demolished over time, provided
19 these units will not be demolished until Developer builds new units and relocates the existing
20 tenants into these new units in accordance with the terms of the Development Agreement.
21 Upon completion, approximately 5,679 net new residential units would be added to the Project
22 Site for a total of 8,900 residential units (1,683 existing-to-be-retained units + 1,538 newly
23 constructed replacement units + 5,679 newly constructed units = 8,900 units).

24 (f) The Project also includes approximately 310,000 square feet of commercial use,
25 64,000 square feet of recreational/fitness center/community center use, 100,000 square feet

1 of building and property maintenance use, 25,000 square feet of educational use, and net new
2 off-street parking for up to 6,252 vehicles, all as more particularly described in the plan
3 documents incorporated into the Development Agreement.

4 (g) Concurrently with this Ordinance, the Board is taking a number of actions in
5 furtherance of the Project, including the approval of amendments to the City's General Plan
6 (Board File No. 110303), Planning Code (Board File No. 110301), and Zoning
7 Maps (Board File No. 110302) (collectively, together with this Ordinance, the
8 "Project Ordinances").

9 (h) The City has determined that as a result of the development of the Project Site
10 in accordance with the Development Agreement, clear benefits to the public will accrue that
11 could not be obtained through application of existing City ordinances, regulations, and
12 policies, as more particularly described in the Development Agreement. The Development
13 Agreement will eliminate uncertainty in the City's land use planning for the Project Site and
14 secure orderly development of the Project Site consistent with the Parkmerced Special Use
15 District.

16 Section 2. CEQA Findings.

17 (a) On February 10, 2011, at a duly noticed public hearing, the Planning
18 Commission certified the Final Environmental Impact Report ("Final EIR") for the Project, by
19 Motion No. 18269, finding that the Final EIR reflects the independent judgment and
20 analysis of the City and County of San Francisco, is adequate, accurate and objective,
21 contains no significant revisions to the Draft EIR, and the content of the report and the
22 procedures through which the Final EIR was prepared, publicized and reviewed comply with
23 the provisions of the California Environmental Quality Act (California Public Resources Code
24 Section 21000 et seq., "CEQA"), the State CEQA Guidelines (California Code of Regulations
25

1 Title 14 Section 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code
2 ("Chapter 31"). A copy of the Final EIR is on file with the Clerk of the Board in File No.
3 110300.

4 B. At the same hearing during which the Planning Commission certified the Final
5 EIR, the Planning Commission adopted findings, as required by CEQA, regarding the
6 alternatives, mitigation measures, and significant environmental effects analyzed in the Final
7 EIR, a statement of overriding considerations for approval of the Project, and a proposed
8 mitigation monitoring and reporting program (collectively, "CEQA Findings").

9 C. The letter from the Department of Planning transmitting the Development
10 Agreement to the Board of Supervisors, the Final EIR and the CEQA Findings are on file with
11 the Clerk of the Board in File No. 110300. These and any and all other
12 documents referenced in this Ordinance have been made available to, and have been
13 reviewed by, the Board of Supervisors.

14 D. The Board of Supervisors has reviewed and considered the Final EIR and the
15 CEQA Findings. The Board of Supervisors has adopted the Planning Commission's CEQA
16 Findings as its own and incorporated them by reference. The Board of Supervisors approves
17 and endorses the implementation of the mitigation measures for implementation by other City
18 departments and recommends for adoption those mitigation measures that are enforceable by
19 agencies other than City departments, all as set forth in the foregoing resolution.

20 Section 3. General Plan and Planning Code Section 101.1(b) Findings.

21 A. The Board of Supervisors finds that the Development Agreement will serve the
22 public necessity, convenience and general welfare for the reasons set forth in Planning
23 Commission Resolution No. 18273 and incorporates those reasons herein by
24 reference.
25

1 B. The Board of Supervisors finds that the Development Agreement is in conformity
2 with the General Plan, as amended, and the eight priority policies of Planning Code Section
3 101.1 for the reasons set forth in Planning Commission Resolution No. 18273. The
4 Board hereby adopts the findings set forth in Planning Commission Resolution No.
5 18273 and incorporates those findings herein by reference.

6 Section 4. Development Agreement.

7 A. The Board of Supervisors approves all of the terms and conditions of the
8 Development Agreement, in substantially the form on file with the Clerk of the Board of
9 Supervisors in File No. 110300, including but not limited to: (i) one-for-one
10 replacement of certain rent-controlled dwelling units currently existing on the Project Site with
11 new units (the "Replacement Units"); (ii) the non-applicability of certain provisions of the
12 Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50 et seq.; the "Costa-
13 Hawkins Act"), and Developer's waiver of any and all rights under the Costa-Hawkins Act and
14 the Ellis Act (California Government Code Section 7060 et seq.; the "Ellis Act") and any other
15 laws or regulations so that each Replacement Unit will be subject to rent control and other
16 provisions protecting tenants under the City's Rent Ordinance, and each below market rent
17 ("BMR") unit will be subject to the City's BMR requirements as set forth in Planning Code
18 Section 415; and (iii) the relocation by Developer of existing tenants to the Replacement
19 Units, with an initial rent and pass through charges equal to the rent and pass through
20 charges charged to the existing tenant for his or her existing unit at the time of relocation, with
21 the right to remain in the Replacement Unit for an unlimited term subject to the eviction rules,
22 procedures and protections set forth in the San Francisco Rent Ordinance, and with no pass
23 through charges added to rent of the Replacement Unit for the capital costs of the Project.

24 B. The Board of Supervisors also approves the subdivision and condominium map
25 provisions as set forth in Section 3.10 of the Development Agreement, including the

1 requirements relative to the Recorded Restrictions. The Board of Supervisors understands
2 and agrees that the Replacement Units shall be rental units for the life of the building, and the
3 Replacement Units shall be rent controlled for so long as the San Francisco Rent Ordinance,
4 as amended, supplanted or replaced, remains in effect.

5 C. Without limiting the terms of the Development Agreement, the Board of
6 Supervisors expressly finds that the items listed in Section 4.A and 4.B above are a material
7 and important part of the Development Agreement, and the Board would not be willing to
8 approve the Development Agreement without these provisions.

9 D. The Board of Supervisors approves and authorizes the execution, delivery and
10 performance by the City of the Development Agreement, subject to the approval of the
11 Development Agreement by the City's Municipal Transportation Agency and Public Utilities
12 Commission, each in their sole discretion (the "Subsequent Approvals") and Developer's
13 payment of all City costs with respect to the Development Agreement. Upon receipt of the
14 Subsequent Approvals and the payment of City's costs billed to Developer, (i) the Director of
15 Planning and other listed City officials are authorized to execute and deliver the Development
16 Agreement, and (ii) the Director of Planning and other applicable City officials are authorized
17 to take all actions reasonably necessary or prudent to perform the City's obligations under the
18 Development Agreement in accordance with the terms of the Development Agreement and
19 Chapter 56, as applicable. The Director of Planning, at his or her discretion and in
20 consultation with the City Attorney, is authorized to enter into any additions, amendments or
21 other modifications to the Development Agreement that the Director of Planning determines
22 are in the best interests of the City and that do not materially increase the obligations or
23 liabilities of the City or decrease the benefits to the City under the Development Agreement,
24 subject to the approval of any affected City agency as more particularly described in the
25 Development Agreement.

1 Section 5. Chapter 56 Waiver; Ratification.

2 A. In connection with the Development Agreement, the Board of Supervisors finds
3 that the requirements of Chapter 56 have been substantially complied with, and hereby
4 waives any procedural requirements of Chapter 56 if and to the extent that they have not been
5 strictly complied with.

6 B. All actions taken by City officials in preparing and submitting the Development
7 Agreement to the Board of Supervisors for review and consideration are hereby ratified and
8 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken
9 by City officials consistent with this Ordinance.

10 Section 6. Effective Date. This Ordinance shall become effective on the date that all of
11 the Project Ordinances are effective.

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15
16 By: 

17 Charles R. Sullivan
18 Deputy City Attorney
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20
21
22
23
24
25

LEGISLATIVE DIGEST

[Development Agreement - Parkmerced]

Ordinance approving a Development Agreement between the City and County of San Francisco and Parkmerced Investors LLC for certain real property located in the Lake Merced District of San Francisco and commonly referred to as Parkmerced, generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west, making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan and with the eight priority policies of Planning Code Section 101.1(b), and waiving certain provisions of Administrative Code Chapter 56.

Existing Law

California Government Code section 65864 *et seq.* (the "Development Agreement Statute") and Chapter 56 of the San Francisco Administrative Code ("Chapter 56") authorize the City to enter into a development agreement regarding the development of real property. Chapters 37 and 37A of the San Francisco Administrative Code (the "Rent Ordinance") establishes certain tenant protections and rights with respect to rental units that are covered by the Rent Ordinance. As a general matter, rental units that are created after the effective date of the Rent Ordinance, or June 13, 1979, are not covered by the Rent Ordinance.

Amendments to Current Law

The proposed ordinance, if adopted, would result in the approval of the proposed development agreement (the "Development Agreement") with Parkmerced Investors LLC ("Developer") in accordance with the Development Agreement Statute and Chapter 56. The Development Agreement would provide to Developer the vested right to develop the project site as described in the Development Agreement over a 30 year term. There are no proposed amendments to current law. The parties have agreed to impose the Rent Ordinance on the 1,538 replacement units.

Background Information

Under the Development Agreement, the Developer proposes to increase residential density, provide a neighborhood core with new commercial and retail services, reconfigure the street network, improve and enhance the open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities within the project site. The project includes the retention of approximately half of the existing apartments at the site. The

remaining half would be demolished over time, provided these units will not be demolished until the Developer builds new units and relocates the existing tenants into these new units. Upon completion, approximately 5,679 net new residential units would be added to the project site for a total of 8,900 residential units (1,683 existing-to-be-retained units + 1,538 newly constructed replacement units + 5,679 newly constructed units = 8,900 units). The parties have agreed that the Rent Ordinance, including the rent control provisions, will apply to the 1,538 replacement units.

The project also includes approximately 310,000 square feet of commercial use, 64,000 square feet of recreational/fitness center/community center use, 100,000 square feet of building and property maintenance use, 25,000 square feet of educational use, and net new off-street parking for up to 6,252 vehicles, all as more particularly described in the Development Agreement.

By separate legislation, the Board is considering taking a number of actions in furtherance of the proposed project, including the approval of amendments to the City's General Plan, Planning Code and Zoning Maps.



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 18269 Environmental Impact Report Certification

HEARING DATE: FEBRUARY 10, 2011

Hearing Date: February 10, 2011
Case No.: 2008.0021E
Project Address: 3711 19th Avenue
Zoning: RM-4, RM-1 and RH-1(D)
40-X and 1Height and Bulk District
Block/Lot: 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001,
7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-
003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001,
7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001,
7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001,
7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-
001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-
001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001,
7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-
001, and 7370-001
Project Sponsor: Seth Mallen, Parkmerced Investors, LLC
3711 19th Avenue
San Francisco, CA 94132
Staff Contact: Rick Cooper - (415) 575-9027
rick.cooper@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED PARKMERCED PROJECT

MOVED; that the San Francisco Planning Commission ("Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2008.0021E, Parkmerced Project, 3711 19th Avenue ("Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department ("Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, "CEQA"), the State CEQA Guidelines (Cal. Code of Regulations Title 14, Section 15000 *et seq.*, "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

- A. The Department determined that an Environmental Impact Report ("EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on May 20, 2009.
 - B. On May 12, 2010, the Department published the Draft Environmental Impact Report ("DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
 - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on May 12, 2010.
 - D. On May 12, 2010, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
 - E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on May 12, 2010.
2. The Commission held a duly noticed public hearing on the DEIR on June 17, 2010, and received public comment. The period for acceptance of written comments ended on July 12, 2010.
 3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 61-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received and based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Comments and Responses document, published on October 28, 2010, distributed to the Commission and all parties who commented on the DEIR, and made available to the public at the Department at 1650 Mission Street.
 4. The Department has prepared a Final Environmental Impact Report (FEIR), consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document, all as required by law.
 5. Project Environmental Impact Report files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, and are part of the record before the Commission.
 6. On February 10, 2011 the Commission reviewed and considered the FEIR and finds that the contents of the FEIR and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31.

7. The Planning Commission finds that the FEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby CERTIFIES THE COMPLETION of the FEIR in compliance with CEQA and the CEQA Guidelines.
8. The Commission, in certifying the completion of the FEIR, finds that the project described in it:
 - A. Will result in the following significant and unavoidable project-specific environmental impacts:
 - 1) Elimination of a visual/scenic resource of the built environment through the demolition of the existing garden apartment buildings and the removal of the existing landscaping;
 - 2) Impairment of the significance of the Parkmerced historic district, an historical resource, through the demolition of the existing garden apartment buildings and removal of existing landscape features on the Project Site;
 - 3) Construction-related transportation impacts in the project vicinity due to construction vehicle traffic and road construction associated with the realignment of the existing light rail tracks;
 - 4) Traffic impacts at 8 intersections, including:
 - Junipero Serra Boulevard/Sloat Boulevard/St. Francisco Boulevard/Portola Drive – Significant contribution to LOS F conditions during the weekday PM peak hour and weekend midday peak hour;
 - Junipero Serra Boulevard/John Daly Boulevard/I-280 Northbound On-Ramp/I-280 Southbound Off-Ramp/SR 1 Northbound On-Ramp – Significant contribution to LOS F conditions during the weekday PM peak hour;
 - 19th Avenue/Sloat Boulevard – LOS E to LOS F in the AM peak hour;
 - 19th Avenue/Winston Drive – LOS D to LOS E in the weekend midday peak hour and significant contribution to LOS F conditions during the PM peak hour;
 - Sunset Boulevard/Lake Merced Boulevard – LOS C to LOS E in the PM peak hour;
 - Lake Merced Boulevard/Winston Drive – LOS C to LOS E in the AM peak hour and LOS D to LOS F in the PM peak hour;
 - Lake Merced Boulevard/Fort Boulevard – LOS D to LOS F in the AM peak hour and LOS C to LOS F in the PM peak hour; and
 - Lake Merced Boulevard/Brotherhood Way – LOS D to LOS E in the AM peak hour, LOS C to LOS F in the PM peak hour, and LOS C to LOS E in the weekend midday peak hour;

- 5) Traffic impacts on the following freeway segments:
 - Southbound State Route 1 (Junipero Serra Boulevard) weaving segment between the on-ramp from Brotherhood Way and the off-ramp to John Daly Boulevard – Significant contribution to LOS E conditions during the AM peak hour, and LOS E to LOS F during the PM peak hour; and
 - Northbound State Route 1 (Junipero Serra Boulevard) weaving segment between the Brotherhood Way on-ramp and Brotherhood Way off-ramp, due to uncertainty of proposed mitigation to remove the loop onramp and replace it with a left-turn onramp, which is subject to Caltrans' jurisdiction.
- 6) Potential transit impacts due to the exceedance of the available transit capacity of Muni transit routes serving the Project Study Area, due to uncertainty of proposed mitigation to provide additional transit vehicles, which is subject to SFMTA's jurisdiction;
- 7) Potential transit impacts to the M Ocean View light rail due to route realignment and subsequent increased travel time, due to uncertainty of proposed mitigation to provide additional light rail vehicles or install transit signal priority, which are both subject to the SFMTA's jurisdiction;
- 8) Potential transit impacts due to increased vehicular traffic resulting in increased travel times for operations of the Muni 17-Parkmerced, 18-48th Avenue, 28-19th Avenue, 28L-19th Avenue Limited and 29-Sunset bus lines, as well as SamTrans bus service along the Lake Merced Boulevard corridor, due to uncertainty of proposed mitigation to provide additional transit vehicles or install transit preferential treatments, which are both subject to SFMTA's jurisdiction;
- 9) Transit impacts due to increased travel times and effects to operations of the Muni 17-Parkmerced, 28-19th Avenue and 28L-19th Avenue Limited and 29-Sunset bus lines, as well as SamTrans bus service along the Lake Merced Boulevard corridor;
- 10) Noise impacts due to increased traffic;
- 11) Light rail noise and vibration impacts;
- 12) Noise impacts due to operation of stationary noise sources potentially exceeding noise level standards;
- 13) Construction-related toxic air contaminates impact;
- 14) Operational regional air quality impacts;
- 15) Temporary wind impacts during phased construction;

16) Potential wind impacts due to the proposed Special Use District, which could result in exceedances of the wind hazard criterion or increases in the area subject to winds greater than 26 mph;

17) Operational biological impacts to special-status species, including interference with bird or bat movement and migration corridors and raptor nest sites due to operation of the 51 wind turbines on the western periphery of the Project Site;

B. Will contribute considerably to the following cumulative environmental impacts:

1) A cumulative impact to the Parkmerced historic district, an historical resource, through the demolition of the existing garden apartment buildings and removal of existing landscape features.

2) Cumulative traffic impacts at 13 intersections, including:

- Junipero Serra Boulevard/Sloat Boulevard/St. Francis Boulevard/Portola Drive;
- Junipero Serra Boulevard/John Daly Boulevard/I-280 Northbound On-Ramp/I-280 Southbound Off-Ramp/SR 1 Northbound On-Ramp;
- 19th Avenue/Sloat Boulevard;
- 19th Avenue/Winston Drive;
- 19th Avenue/Holloway Avenue;
- Brotherhood Way/Chumaseo Drive;
- Sunset Boulevard/Lake Merced Boulevard;
- Lake Merced Boulevard/Winston Drive;
- Lake Merced Boulevard/Font Boulevard;
- Lake Merced Boulevard/Brotherhood Way;
- Lake Merced Boulevard/John Muir Drive;
- John Daly Boulevard/Lake Merced Boulevard; and
- Lake Merced Boulevard/Gonzalez Drive;

3) Cumulative impacts to traffic at four freeway segments on State Route 1 (Junipero Serra Boulevard):

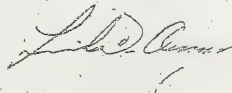
- Southbound between the Brotherhood Way on-ramp and John Daly Boulevard off-ramp;
- Northbound between the off-ramp to Northbound I-280 and the John Daly Boulevard on-ramp;
- Northbound between the John Daly Boulevard on-ramp and the Alemany Boulevard off-ramp; and

Motion No. 18270
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CASE NO. 2008.0021E
3711- 19th Avenue

- Northbound between the Brotherhood Way loop on- and off-ramps, due to uncertainty of proposed mitigation to remove the loop onramp and replace it with a left-turn onramp, which is subject to Caltrans' jurisdiction;
- 4) Cumulative impact to transit capacity under 2030 cumulative conditions by contributing transit ridership to screenlines expected to exceed available transit capacity;
- 5) Cumulative noise impacts due to increases in traffic from the Project in combination with other development; and
- 6) Cumulative air quality impacts;

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of February 10, 2011.



AYES: Commissioners Antonini, Borden, Fong, and Miguel

NAYS: Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED: February 10, 2011



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18271

Planning Code Text Amendment,
Zoning Map Amendment, and General Plan Amendment
HEARING DATE: FEBRUARY 10, 2011

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name: Parkmerced Mixed-Use Development Program
T Case: Add Section 249.64; Amend Sections 102.5, 201, and 270
Z Case: Rezone the Subject Property
M Case: Amend the General Plan Urban Design Element Map 4
2008.0021EPMTZW
Case Number:
Initiated by: Seth Mallen, Parkmerced Investors, LLC
3711 - 19th Avenue
San Francisco, CA 94132
Staff Contact: Elizabeth Watty, Planner
Elizabeth.Watty@sfgov.org, 415-558-6620
Reviewed By: David Alumbaugh, Acting Director Citywide Planning.
David.Alumbaugh@sfgov.org, 415-558-6601
90-Day Deadline: N/A - Sponsor Initiated
Recommendation: Recommend Approval

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AN ORDINANCE THAT WOULD (1) AMEND THE SAN FRANCISCO PLANNING CODE TEXT TO CREATE PLANNING CODE SECTION 249.64, THE "PARKMERCED SPECIAL USE DISTRICT" (PMSUD), AMEND PLANNING CODE SECTION 270 TO CREATE A NEW BULK DISTRICT ("PM") FOR THE PROPOSED PARKMERCED SPECIAL USE DISTRICT, AMEND PLANNING CODE SECTION 102.5 AND 201 TO INCLUDE THE PARKMERCED ZONING DISTRICTS; (2) AMEND THE PLANNING CODE ZONING MAP SHEETS ZN13, HT13, AND SU13 TO RECLASSIFY PARKMERCED, BEING ALL OF ASSESSOR'S BLOCKS 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, AND 7370-001 FROM RM-1 (RESIDENTIAL MIXED, LOW DENSITY), RM-4 (RESIDENTIAL MIXED, HIGH DENSITY), & RH-1(D) (RESIDENTIAL HOUSE, ONE-FAMILY, DETACHED) DISTRICTS, TO PM (PARKMERCED RESIDENTIAL (PM-R), PARKMERCED MIXED USE - SOCIAL HEART (PM-MU1), PARKMERCED MIXED USE - NEIGHBORHOOD COMMONS (PM-MU2), PARKMERCED SCHOOL (PM-S), PARKMERCED COMMUNITY/FITNESS (PM-CF), AND PARKMERCED OPEN SPACE (PM-OS)), AND TO MAKE CONFORMING MAP AMENDMENTS TO FACILITATE THE LONG-RANGE DEVELOPMENT PLANS OUTLINED IN THE PARKMERCED MIXED-USE

DEVELOPMENT PROGRAM; (3) AMEND THE SAN FRANCISCO GENERAL PLAN URBAN DESIGN ELEMENT MAP 4 TO MAKE CONFORMING MAP AMENDMENTS; (4) ADOPT A RESOLUTION URGING THE CALIFORNIA COASTAL COMMISSION TO AMEND THE LOCAL COASTAL PROGRAM TO INCORPORATE THE AMENDMENTS HEREIN; AND (5) MAKE AND ADOPT FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

PREAMBLE

On January 8, 2008, Seth Mallen of Steller Management (hereinafter "Project Sponsor"), submitted an Environmental Evaluation Application with the Planning Department (hereinafter "Department"), Case No. 2008.0021E; and

On May 12, 2010, the Draft Environmental Impact Report (DEIR) for the Project was prepared and published for public review; and

The Draft EIR was available for public comment until July 12, 2010; and

On February 10, 2011, the San Francisco Planning Commission (hereinafter "Commission") reviewed and considered the Final Environmental EIR (FEIR) and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

On February 10, 2011, the Commission: certified the FEIR by Motion No. 18629, adopted approval findings pursuant to CEQA by Motion No. 18270 (Exhibit A); and adopted the Mitigation, Monitoring, and Reporting Program (MMRP) (Exhibit B to Motion No. 18270). The CEQA approval findings and the MMRP (Exhibits A and B, respectively, to Motion No. 18270) are incorporated herein by this reference thereto as if fully set forth in this Motion; and

On August 12, 2010, the Project Sponsor applied to the Planning Department for a Planning Code Text Amendment, a Zoning Reclassification and a General Plan Amendment (hereinafter Map Amendments) to allow for the creation and implementation of the Parkmerced Special Use District under Case No. 2008.0021MTZ; and

The proposed General Plan Amendments would make conforming amendments to the Urban Design Element's Map 4 to reflect the proposed rezoning; and

The proposed Zoning Reclassification would amend Zoning Map Sheets ZN13, HT13, and SU13 to rezone Parkmerced, being all of Assessor's blocks 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-

001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001 from RM-1 (Residential Mixed, Low Density), RM-4 (Residential Mixed, High Density), & RH-1(D) (Residential House, One-Family, Detached) Districts, to PM (Parkmerced Residential (PM-R), Parkmerced Mixed Use – Social Heart (PM-MU1), Parkmerced Mixed Use – Neighborhood Commons (PM-MU2), Parkmerced School (PM-S), Parkmerced Community/Fitness (PM-CF), and Parkmerced Open Space (PM-OS) (hereinafter “Parkmerced Zoning Districts”)); and

The proposed Planning Code Text Amendments would create Planning Code Section 249.64, the “Parkmerced Special Use District” (hereinafter “PMSUD”), amend Planning Code Section 270 to create a new Bulk District (PM) for the proposed Parkmerced Special Use District, and amend Planning Code Section 102.5 and 201 to include the Parkmerced Zoning Districts; and

On October 27, 2010 the Project Sponsor filed a Development Agreement Application after months of negotiations with the Mayor’s Office of Workforce and Economic Development; and

The Commission conducted informational hearings on the Parkmerced Project and considered public comment on November 4, November 18, December 9, December 16, 2010, and on January 13, 2011; and

On January 10, 2011, the Project Sponsor filed a Coastal Zone Permit Application, to authorize the rezoning and development of Assessor’s Blocks 7309, 7309-A, 7334, 7333, portions of which are located within the Local Coastal Zone Permit Area; and

On January 13, 2011, the Commission passed Resolution No. 18255, initiating amendments to the Planning Code, Zoning Maps, and General Plan related to the proposed Project; and

On February 10, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinances; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff, and other interested parties; and

All pertinent documents associated with Case No. 2008.0021EPM~~IT~~ZW may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

Whereas, the Commission has reviewed the proposed Ordinances; and

MOVED, that the Commission hereby recommends that the Board of Supervisors approve the proposed Ordinances, following execution of the Development Agreement, and adopt the attached Resolution to that effect; and,

MOVED, that the Commission hereby recommends that the Board of Supervisors request amendment of the Local Coastal Program to the California Coastal Commission to reflect the adoption of these

Ordinances and the findings herein, and further request that such amendment of the Local Coastal Program will become effective immediately upon approval by the California Coastal Commission, without further action required by the City and County of San Francisco.

MÓVED, that the Commission hereby recommends, that the Board of Supervisors approve both the *Connect Cambon to 19th Avenue* project variant (as described in Appendix B of the Parkmerced Design Standards + Guidelines) and the Project, with a condition placed on the Project Variant that the vehicularized Diaz Avenue, between Cambon and Gonzalez Drives, retain the strong pedestrian connection to the Diaz pedestrian plaza, reinforced in part by the elimination of the on-street parking and the widening of the sidewalks on this block.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Commission finds the Parkmerced Mixed-Use Development Program to be a beneficial development to the City that could not be accommodated without the actions requested.

1. Parkmerced was constructed in the 1940s and early 1950s based on a model of separation of land uses, extensive reliance on the automobile for all purposes, and an insular circulation system featuring few connections to the wider city context. These patterns of development have proven to be unsustainable and exacerbate local and regional problems of transportation, air quality, and energy consumption and embody characteristics that do not meet the needs of today and the future to support sustainable growth.
2. Assembly Bill 32 set statewide goals for greenhouse gas reductions and Senate Bill 375 further requires local regions and municipalities to coordinate land use and transportation plans to reduce greenhouse gas emissions. In the Bay Area, according to the Bay Area Air Quality Management District, 40% of greenhouse gas emissions come from transportation, primarily private vehicle travel. The average Bay Area household drives 18,000 miles per year. Low residential density and lack of mixed uses that prevent trips from being effectively served by public transit or made by walking or bicycling are the primary reasons for high Vehicle Miles Travelled (VMT) for Bay Area households. Regional growth will occur, and it is the duty of every Bay Area city to direct growth to infill areas that are supported by necessary services and well-served by public transportation and that do not expand the footprint of existing urbanized areas.
3. The proposed infill Project density of 59 units per acre, incorporation of neighborhood-serving retail into a neighborhood center, and retrofitting of the block pattern to reduce block size, is more typical of San Francisco neighborhoods with low VMT. Based on consistent data from similar neighborhoods locally and throughout the country, the VMT of households in such a neighborhood is expected to be less than 10,000 miles per year.
4. Parkmerced is already well situated with regard to public transit infrastructure, as it sits adjacent to MUNI light rail service on 19th Avenue, is served by several MUNI bus lines, and is close to the Daly City BART station. It is currently substantially underbuilt based on existing zoning. It is one

of the best situated areas on the west side of the City to absorb growth in a transit-oriented and sustainable fashion, and its ownership under a single entity provides a rare opportunity to consider a long-term master plan for reconfiguration and improvement to meet the needs of the 21st-century and beyond.

5. The proposed transportation investments as part of the Project, including MUNI rail re-alignment through the Project Site, would further improve service to the area and provide more operational options to the San Francisco Metropolitan Transit Authority (hereinafter, "SFMTA"). The proposal has been well-coordinated with SFMTA, paves the way and provides a down-payment for more long-term "Tier 5" options, and the Development Agreement paves the way for evaluating and incorporating additional Tier 5 options by the City. Without this Project, the City may not be able to achieve the necessary transportation improvements in the 19th Avenue corridor.
6. The existing Parkmerced landscape is resource consumptive in its expansive use of manicured mono-cultural lawns, and the original neighborhood and landscape design directly disrupted and degraded ecological functions, particularly by diverting rainwater flow away from the underground aquifer and Lake Merced. The proposed Parkmerced Mixed-Use Development Program will result in a landscape that is both environmentally and financially sustainable and restores degraded systems. Improvements include creation of a system of bioswales and cisterns to direct stormwater into a restored creek corridor feeding into Lake Merced and/or the underlying groundwater basin. In addition, the proposed Parkmerced Mixed-Use Development Program will result in the generation of 20% of the total estimated annual energy consumed by the Project, through the installation of renewable energy sources (such as photovoltaic cells and wind turbines) and cogeneration facilities.
7. The existing neighborhood, while giving the impression of expansive open space, has little usable public open space. Its publicly-accessible green spaces are primarily comprised of snippets and in-between spaces such as roadway medians, building setbacks and undefined planted areas separating towers. The proposed Project would re-design the open space system to create distinct public open spaces in the form of both a larger connected network of major public open spaces, including a creek corridor, athletic fields, and farm (which the Project Sponsor proposes to develop as organic and which may be managed by a professional farmer), as well as smaller dispersed neighborhood parks activated by adjacent community uses and small-scale retail.
8. The Parkmerced Mixed-Use Development Program would result in increased rental and for-sale housing of various sizes and income levels, and would provide a great diversity of housing types to meet the needs of a broad spectrum of household types. The proposal would provide a broader range of building and unit types than exist today. Whereas 7% of current units have three bedrooms, the proposed Project would include 15% 3-bedroom units. While today over 52% of existing units are in the 13-story towers, upon full build-out, fewer than 35% of all units will be in towers of 11-14 stories.
9. Under the terms of the proposed Development Agreement, the Project would replace, on a one-for-one basis, the 1,538 existing units subject to the City's Residential Rent Stabilization and Arbitration Ordinance (hereinafter, "Rent Stabilization Ordinance") that would be demolished as part of the proposed Project with 1,538 "replacement units" of comparable size in newly constructed buildings. All existing tenants in these to-be-demolished units would be offered a

replacement unit of comparable size at their existing rents, all relocation expenses would be paid for by the Project Sponsor, and, under the terms of the proposed Development Agreement, the replacement unit would be subject to the provisions of the Rent Stabilization Ordinance for the life of the building. Replacement units in the new buildings would be chosen by existing tenants on a seniority basis. To the extent that any of the 1,538 replacement units are not occupied by an existing tenant who has elected to relocate, the replacement unit will be made available to a new tenant and will also be subject to the provisions of the Rent Stabilization Ordinance for the life of the building. The Project Sponsor will pay relocation expenses to existing tenants who choose not to relocate into a replacement unit.

10. The Parkmerced Mixed-Use Development Program would result in an entire neighborhood completely built in conformity with the City's recently-adopted Better Streets Plan, providing an excellent pedestrian environment.
11. The Parkmerced Mixed-Use Development Program would result in numerous public improvements to the intersections adjacent to and surrounding Parkmerced, providing circulation benefits not just for Parkmerced but for the wider community.
12. The Parkmerced Mixed-Use Development Program would create a social heart for the community, and would create a traditional pedestrian-oriented neighborhood commercial district within close walking distance of all Parkmerced residents. The proposed Parkmerced Mixed-Use Development Program would result in 1,500 permanent jobs.
13. The proposed Project includes a comprehensive program for environmental sustainability, seeking to minimize any growth in water or energy use, to accommodate new growth by constructing infrastructure in a manner that will allow connection to future recycled water supplies, and by committing to invest in renewable energy infrastructure and efficiency measures that are above and beyond existing requirements.
14. The Parkmerced Mixed-Use Development Program establishes a detailed design review process for buildings and community improvements.
15. The Planning Code Text Amendments, Zoning Reclassifications, and General Plan Map Amendment are necessary in order to approve the Parkmerced Mixed-Use Development Program.

1. General Plan Compliance. The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT (2004 PER WRIT)

Objectives and Policies

OBJECTIVE 1:

TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

Policy 1.4

Locate in-fill housing on appropriate sites in established residential neighborhoods.

San Francisco is expected to provide 68,000 new by 2035, in order to meet the Association of Bay Area Governments' (ABAG) projections for San Francisco's projected population growth¹. The Parkmerced Mixed-Use Development Project will help provide approximately 8% of the City's total housing goals, with a total of 5,679 new units at full Project build-out, over the next 20-30 years.

Parkmerced is currently accessible by public transit and located within an established residential neighborhood. One of the shortcomings of the existing residential neighborhood is that it does not have convenient non-vehicular access to neighborhood-serving amenities. As a result of this Project, neighborhood-serving amenities will be built, and there will be improved pedestrian and bicycle access to those amenities.

The Project will create transit infrastructure improvements, in addition to the bicycle and pedestrian improvements. Two new light rail transit stops will be added, and one light rail stop relocated to a more convenient and safer location, within the Parkmerced Site. Since proximity to transit does influence rates of auto ownership and the need for parking, locating 5,679 net new units at Parkmerced supports the City's transit first policy, which discourages car dependency.

OBJECTIVE 2:

RETAIN THE EXISTING SUPPLY OF HOUSING

Policy 2.3

Restrict the conversion of rental housing to other forms of tenure or occupancy.

¹ This number represents a recent update ABAG made to recognize the recession of 2008. Although these updated numbers have not yet been formally adopted and thus are not the "official" ABAG Projections, they are found to be more accurate based on the City and ABAG's analyses, and their use is consistent with ABAG's current regional planning work and development of the Sustainable Communities Strategy.

Existing housing stock is the City's major source of relatively affordable housing. Although it is typically difficult to replace given the cost of new construction, the Parkmerced Mixed-Use Development Program will include replacement housing for all demolished units and will provide such replacement housing to existing tenants at their current rent. Furthermore, the Parkmerced Mixed-Use Development Program will retain the existing quantity of rental units at the Site within the newly constructed buildings, so that at no time will there be less than the existing 3,221 rental units at Parkmerced. This will be memorialized through the execution of the Development Agreement.

OBJECTIVE 3:

ENHANCE THE PHYSICAL CONDITION AND SAFETY OF HOUSING WITHOUT JEOPARDIZING USE OR AFFORDABILITY.

Policy 3.5

Improve the seismic stability of existing housing without reducing the supply of affordable housing.

The Parkmerced Mixed-Use Development Program, at full build-out, will result in increased seismic stability for residents occupying the Site, while not reducing the supply of affordable housing.

The existing garden apartments that will be demolished as part of this Project cannot feasibly be rehabilitated; Parkmerced was originally constructed during the material shortages of World War II and the buildings are reaching the end of their useful life.

OBJECTIVE 4:

SUPPORT AFFORDABLE HOUSING PRODUCTION BY INCREASING SITE AVAILABILITY AND CAPACITY

Policy 4.1

Actively identify and pursue opportunity sites for permanently affordable housing.

Policy 4.2

Include affordable units in larger housing projects.

Policy 4.3

Encourage the construction of affordable units for single households in residential hotels and "efficiency" units.

Policy 4.6

Support a greater range of housing types and building techniques to promote more economical housing construction and potentially achieve greater affordable housing production.

One of the Policies in the General Plan states that "large and privately held land parcels should also be identified and actively promoted for affordable housing". The Parkmerced Site is consistent with this Policy in that the Parkmerced Mixed-Use Development Program will meet the requirements of the City's Inclusionary Affordable Housing Program with respect to net new units, with a minimum of 1/3 of such

requirement satisfied through the construction of Below-Market Rate ("BMR") units on or within 1,000 feet of the Project Site.

In addition to providing new BMR units, the Project will also include a diversity of housing typologies, including studio or "efficiency" units.

**OBJECTIVE 6:
PROTECT THE AFFORDABILITY OF EXISTING HOUSING.**

Policy 6.2

Ensure that housing developed to be affordable is kept affordable.

Policy 6.3

Safeguard tenants from excessive rent increases.

Under the terms of the Development Agreement, existing tenants who occupy rent-controlled units would be allowed to relocate to a replacement unit located in a newly constructed building with the same rent and same rent-control protections as their to-be-demolished unit, to ensure that those tenants who currently occupy rent control units who choose to relocate to new units are guaranteed protections from excessive rent increases and arbitrary eviction. Furthermore, under the proposed Development Agreement, all existing rent-controlled units – the physical units themselves – would be replaced with new rent-controlled, replacement units, for the life of the building. As a result, at no time will there be less than 3,221 units subject to the terms of the Rent Stabilization Ordinance.

**OBJECTIVE 8:
ENSURE EQUAL ACCESS TO HOUSING OPPORTUNITIES.**

Policy 8.1

Encourage sufficient and suitable rental housing opportunities and emphasize permanently affordable rental units wherever possible.

Policy 8.4

Encourage greater economic integration within housing projects and throughout San Francisco.

Policy 8.7

Eliminate discrimination against households with children.

Policy 8.8

Promote the adaptability and maximum accessibility of residential dwellings for disabled and elderly occupants.

Policy 8.9

Encourage the provision of new home ownership opportunities through new construction so that increased owner occupancy does not diminish the supply of rental housing.

This Objective of the Housing Element states that population diversity and integration is one of the City's most important assets, and in order to retain that diversity, there needs to be a variety of housing

opportunities available. The Parkmerced Mixed-Use Development Program includes a variety of integrated housing opportunities within the Project Site, including both rental and for-sale units, from efficiency studio units to family-sized three-bedroom units, as well as BMR units as required by the City's Affordable Inclusionary Housing Program and the retention of an additional 3,221 units subject to the terms of the Rent Stabilization Ordinance. Some of the units will be located closer to transit and farther from car storage, whereas other units will be located closer to car storage and farther from transit. This provides great diversity in the type of units available, which should result in population diversity at Parkmerced.

Currently, much of the existing housing at Parkmerced is reaching the end of its useful life and is not ADA accessible. The Parkmerced Mixed-Use Development Program will result in 1,538 of the existing rental units being replaced by new, well-constructed, ADA accessible rental-units. In addition, there will be 5,679 net new units added to Parkmerced, all of which will be well-constructed and ADA accessible.

OBJECTIVE 9:**AVOID OR MITIGATE HARDSHIPS IMPOSED BY DISPLACEMENT.****Policy 9.1**

Minimize the hardships of displacement by providing essential relocation services.

Policy 9.2

Offer displacement households the right of first refusal to occupy replacement housing units that are comparable in size, location, cost, and rent control protection.

The Parkmerced Mixed-Use Development Program, through the Development Agreement, will mitigate hardships imposed by displacement, by providing substantial notice to tenants in advance of their unit's demolition, and guarantees them a new unit of approximately equal size in a newly constructed building, at the same rent-controlled price and with the same protections afforded to rent-controlled units. The Parkmerced Mixed-Use Development Program further mitigates hardships imposed by displacement by relocating any tenant of a to-be-demolished building to a newly constructed replacement unit at the Project Sponsor's sole cost, and by paying relocation benefits to any tenant in of a to-be-demolished building who elects not to relocate to a replacement unit at Parkmerced.

Policy 11.2

Ensure housing is provided with adequate public improvements, services, and amenities.

Policy 11.3

Encourage appropriate neighborhood-serving commercial activities in residential areas, without causing affordable housing displacement.

Policy 11.4

Avoid or minimize disruption cause by expansion of institutions, large-scale uses and auto-oriented development into residential areas.

Policy 11.10

Include energy efficient features in new residential development and encourage weatherization in existing housing to reduce the overall housing costs and the long-range cost of maintenance.

Parkmerced is currently an auto-oriented development that lacks sufficient pedestrian-oriented, neighborhood-serving commercial activities to satisfy the daily needs of its residents. At the core of the Parkmerced Mixed-Use Development Program are many new neighborhood-serving amenities and usable open spaces, such as a neighborhood-commercial commons, new restaurants, a new preschool/elementary school and daycare facility site, fitness center, new athletic fields, walking and biking paths, a new farm, and community gardens.

As part of the Parkmerced Mixed-Use Development Program, all new dwelling units will be energy efficient. The Project's energy-efficiency features include maximizing daylight exposure in new construction, installing Tier 1 or better appliances in residential units, and designing residential and non-residential building envelopes to perform a minimum of 15% and 10%, respectively, more efficiently than current Title 24 standard.

URBAN DESIGN ELEMENT

Objectives and Policies

OBJECTIVE 1:

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 1.1

Recognize and protect major views in the city, with particular attention to those of open space and water.

Policy 1.2

Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.

Policy 1.3

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

Policy 1.4

Protect and promote large-scale landscaping and open space that define districts and topography.

Policy 1.6

Make centers of activity more prominent through design of street features and by other means.

Policy 1.7

Recognize the natural boundaries of districts, and promote connections between districts.

Policy 1.9

Increase the clarity of routes for travelers.

The siting of new structures within the Parkmerced Mixed-Use Development Program has been designed in such a way so to cluster new towers within existing towers' sight-lines from the residential neighborhoods to the east, in order to preserve views of Lake Merced and the Pacific Ocean from the adjacent neighborhoods. While maintaining Juan Bautista Circle and the major radial streets that currently characterize Parkmerced, the street grid of Parkmerced would be redesigned to increase clarity for travelers by creating a more legible hierarchy of street types, and by providing a grid that is easier to navigate due to its smaller blocks and more orthogonal orientation. With a prevailing neighborhood fabric of 4-to-6 stories, taller structures of 8-10 stories will be located at key intersections and adjacent to notable locations and spaces to define centers of activity, provide landmarks and clarity for movement, and activate public spaces. Further, denser and taller development is generally concentrated on the east half of the site, closer to 19th Avenue to emphasize connection to public transit and this major transportation corridor, while tapering down in intensity toward the west. The open space system will include major district-scale open spaces, connecting Juan Bautista Circle with the stream corridor to the athletic fields, farm, and Belvedere Garden connecting to Lake Merced; together this system will better define the edge of the neighborhood and create clear connections between adjacent districts, linking major local and regional open spaces with large-scale landscape features and providing clarity for residents and visitors.

OBJECTIVE 3:

MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

Policy 3.1

Promote harmony in the visual relationships and transitions between new and older buildings.

Policy 3.2

Avoid extreme contrasts in color, shape and other characteristics which will cause new buildings to stand out in excess of their public importance.

Policy 3.3

Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations.

Policy 3.4

Promote building forms that will respect and improve the integrity of open spaces and other public areas.

Policy 3.5

Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.

Policy 3.6

Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

Policy 3.7

Recognize the special urban design problems posed in development of large properties.

The Parkmerced Mixed-Use Development Program includes the retention of the 11 existing tower buildings, and the construction of approximately 5,679 net new units. The new units will be constructed in new buildings that will be compatible with the existing structures, and will vary in height and design. The siting of new structures has been designed in such a way so to cluster new towers within existing towers' sight-lines from the residential neighborhoods to the east, in order to preserve views of Lake Merced and the Pacific Ocean from the adjacent neighborhoods. The street grid of Parkmerced would be redesigned to increase clarity for travelers by creating a more legible hierarchy of street types, and by providing a grid that is easier to navigate due its smaller blocks and more orthogonal orientation. With a prevailing neighborhood fabric of 4-to-6 stories, taller structures of 8-10 stories will be located at key intersections and adjacent to notable locations and spaces to define centers of activity, provide landmarks and clarity for movement, and activate public spaces. Further, denser and taller development is generally concentrated on the east half of the site, closer to 19th Avenue to emphasize connection to public transit and this major transportation corridor, while tapering down in intensity toward the west. The open space system will include major district-scale open spaces, to better define the edge of the neighborhood and create clear connections between adjacent districts and to link major local and regional open spaces with large-scale landscape features.

Each new building constructed as part of the Parkmerced Mixed-Use Development Program will be subject to a design review process conducted by the Planning Department and governed by the terms of the proposed Parkmerced Special Use District. The design review process is intended to ensure that all buildings within Parkmerced are designed to complement the aesthetic of the development, exhibit high quality architectural design and comply with the requirements of the Parkmerced Design Standards + Guidelines and the Parkmerced Sustainability Plan.

The Project Site is large - approximately 152 acres (including streets) - and as such, it has been given close consideration with regard to Project's urban design features, the need for neighborhood-serving amenities, and the need for improved transit. The five guiding Plan documents (including the above referenced Design Standards + Guidelines and the Sustainability Plan) together constitute a "master plan" for the Site, creating a framework and set of rules for the Site's future development. Through these guiding documents, the full build-out of this Site will be a better connected community with a fine-grain urban fabric containing small blocks and a variety of building heights and sizes; the Site's physical access to the surrounding established neighborhoods will be improved through the creation of new bicycle, pedestrian, and transit connections at the Site's periphery.

OBJECTIVE 4:

IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 4.3

Provide adequate lighting in public areas.

Policy 4.4

Design walkways and parking facilities to minimize danger to pedestrians.

Policy 4.5

Provide adequate maintenance for public areas.

Policy 4.6:

Emphasize the importance of local centers providing commercial and government services.

Policy 4.8:

Provide convenient access to a variety of recreation opportunities.

Policy 4.9:

Maximize the use of recreation areas for recreational purposes.

Policy 4.10:

Encourage or require the provision of recreation space in private development.

Policy 4.12:

Install, promote and maintain landscaping in public and private areas.

Policy 4.13:

Improve pedestrian areas by providing human scale and interest.

The Parkmerced Mixed-Use Development Program includes numerous guidelines that enhance the public realm, livability, and character of the neighborhood. These features include ground-floor walk-up units in all new buildings, required landscaping strips at the front of all properties, uniform plantings and street trees, pedestrian-oriented lighting, 2,945,000sf of new open spaces such as athletic fields, community gardens, and an farm that will give the neighborhood an identity and provide a center for activity. The Development Agreement outlines operational standards and maintenance procedures to be followed by the Project Sponsor (or homeowners' association, as applicable) for all privately-owned public spaces.

Parking garages, which typically lack visual interest, will be underground and located on the western side of the Site, which will increase pedestrian safety by not having automobile ingress and egress crossing sidewalks throughout the neighborhood. Utility wires will also be located underground to enhance the appearance of the streets and neighborhood.

Throughout the Site there will be approximately 230,000 square feet of new neighborhood-serving retail, including a full-service grocery store. There will neighborhood-serving amenities of small and moderate scale, in order to create both a commercial core and to provide services within close proximity of every dwelling-unit. There will also be 80,000sf of office space, 25,000sf dedicated to a preschool/elementary school or daycare facility, and 64,000sf dedicated to a fitness/community center.

RECREATION AND OPEN SPACE ELEMENT**Objectives and Policies**

OBJECTIVE 1:

PROVIDE OPPORTUNITIES FOR RECREATION AND THE ENJOYMENT OF OPEN SPACE IN EVERY SAN FRANCISCO NEIGHBORHOOD.

Policy 4.4:

Acquire and develop new public open space in existing residential neighborhoods, giving priority to areas which are most deficient in open space.

Policy 4.5:

Require private usable outdoor open space in new residential development.

Policy 4.6:

Assure the provision of adequate public open space to serve new residential development.

As part of the Parkmerced Mixed-Use Development Program, there will be a total of 2,964,000sf of open space, including 2.1 acres of open space provided through six Neighborhood Commons, 2.94 acres of open space provided through the creation of new athletic fields, and over one-acre of open space provided through the creation of community gardens. In addition to the publically-accessible usable open space, each residential building will contain usable semi-private or private open space in the following ratios: 36 square feet per unit if private open space (e.g. balconies), and 48 square feet per unit if semi-private open space (e.g. roof decks).

TRANSPORTATION ELEMENT**Objectives and Policies****OBJECTIVE 1:**

MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

Policy 1.2

Ensure the safety and comfort of pedestrians throughout the city.

Policy 1.3

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs, particularly those of commuters.

Policy 1.5

Coordinate regional and local transportation systems and provide for interline transit transfers.

Policy 1.6

Ensure choices among modes of travel and accommodate each mode when and where it is most appropriate.

Policy 1.7

Assure expanded mobility for the disadvantaged.

As part of the Parkmerced Mixed-Use Development Program, there will be substantial investment in pedestrian, bicycle, and transit improvements throughout and adjacent to the Site. The Site will be redesigned to be consistent with the City's recently-adopted Better Streets Plan, including the use of smaller blocks and new connections outside of the Site, making it more pedestrian-friendly. There will be an enhanced network of dedicated bikeways, as well as enhanced access to the Site to improve vehicular circulation. The Project will include shuttle service to Daly City BART Station, to encourage the use of public transportation. Lastly, the Project includes re-routing the MUNI M-Oceanview light-rail line through the Site, creating two new transit stops and relocating the existing Parkmerced/SFSU transit within the Site. By re-routing the MUNI M-Oceanview light-rail line and relocating the Parkmerced/SFSU stop, use of transit will be safer and more accessible, by eliminating the need to cross the busy 19th Avenue intersection to board the train. To further encourage the use of public transit, the Project Sponsor will be providing transit pass subsidies, and bike and car share opportunities.

OBJECTIVE 2:

USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

Policy 2.1

Uses rapid transit and other transportation improvements in the city and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

Policy 2.2

Reduce pollution, noise and energy consumption.

Policy 2.4

Organize the transportation system to reinforce community identity, improve linkages among interrelated activities and provide focus for community activities.

Policy 2.5

Provide incentives for use of transit, carpools, vanpools, walking and bicycling and reduce the need for new or expanded automobile and automobile parking facilities.

The Parkmerced Mixed-Use Development Program will improve public transit connections throughout the City and region by re-routing the MUNI M-Oceanview light-rail line through Parkmerced. Such re-routing will make transit stops more accessible, allow SFMTA to run "short-lines" that do not continue all the way through the low-ridership areas to Balboa Park, and provide opportunities for future connections to Daly City BART. It will also incentivize the use of public transit by providing transit subsidies to all tenants, and providing free shuttles to the Daly City BART station. There will also be improved bus service through the Site and free shuttles to local shopping centers, in addition to making bicycle and pedestrian improvements, which together, improve transit connections and accessibility.

OBJECTIVE 4:

MAINTAIN AND ENHANCE SAN FRANCISCO'S POSITION AS THE HUB OF A REGIONAL, CITY-CENTERED TRANSIT SYSTEM.

Policy 4.2

Increase transit ridership capacity in all congested regional corridors.

Policy 4.5

Provide convenient transit service that connects the regional transit network to major employment centers outside the downtown area.

The Parkmerced Mixed-Use Development Program will increase transit ridership capacity by providing funding to SFMTA to purchase an additional light-rail vehicle, which in turn will help SFMTA maintain headways. Through improved service on the MUNI M-Oceanview light-rail line and the provision of a free shuttle service to BART, residents and visitors will have more convenient access to regional transit networks including BART, regional bus lines and the Golden Gate Transit ferry service.

OBJECTIVE 18:

ESTABLISH A STREET HIERARCHY SYSTEM IN WHICH THE FUNCTION AND DESIGN OF EACH STREET ARE CONSISTENT WITH THE CHARACTER AND USE OF ADJACENT LAND.

Policy 18.2

Design streets for a level of traffic that serves, but will not cause a detrimental impact on adjacent land uses, nor eliminate the efficient and safe movement of transit vehicles and bicycles.

As a result of the Parkmerced Mixed-Use Development Program, the entire site will be redesigned to be consistent with the City's Better Streets Plan.

OBJECTIVE 20:

DEVELOP TRANSIT AS THE PRIMARY MODE OF TRAVEL TO AND FROM DOWNTOWN AND ALL MAJOR ACTIVITY CENTERS WITHIN THE REGION.

Policy 21.2

Where a high level of transit ridership or potential ridership exists along a corridor, existing transit service or technology should be upgraded to attract and accommodate riders.

Policy 21.7

Make convenient transfers between transit lines, systems and modes possible by establishing common or closely located terminals for local and regional transit systems by coordinating fares and schedules and by providing bicycle access and secure bicycle parking.

Policy 21.9

Improve pedestrian and bicycle access to transit facilities.

Policy 21.10

Ensure passenger and operator safety in the design and operation of transit vehicles and station facilities.

The Parkmerced Mixed-Use Development Program will result in the re-routing of the MUNI M-Oceanview light-rail line from the middle of the busy 19th Avenue to within the Project Site, making pedestrian and bicycle access to the station safer and more accessible by eliminating the need to cross the busy 19th Avenue intersection to board the train. The Site will continue to be served by several MUNI bus lines, which will also stop in the vicinity of the new station, making transfers relatively easy.

2. The proposed long-range mixed-use development project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Project would enhance the neighborhood-serving retail uses by creating a neighborhood-serving retail core with approximately 230,000 square feet of new retail space, thereby providing the community with services such as a grocery store and banking. The existing Parkmerced development currently has only a very small amount of neighborhood-serving retail, which is located adjacent to the Project Site. In combination with the proposed approximately 69,000 square feet of new office space, the new retail uses would provide opportunities for resident employment and business ownership. Furthermore, the proposed addition of 5,679 net new households would strengthen business at existing establishments in the vicinity of the Project Site and bolster demand for additional retail uses.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Project would preserve the existing diversity and character of Parkmerced by maintaining the same number of rent controlled units (3,221 rent controlled units) that currently exist at Parkmerced. The Project would accomplish this by conserving 1,683 existing rent controlled apartments, which would remain subject to the Rent Stabilization Ordinance, and replacing all 1,538 existing rent controlled apartments that would be demolished by the Project with a new unit that would be subject to the same protections as contained in the Rent Stabilization Ordinance for the life of the building. In addition, under the proposed Project, residents of buildings proposed for demolition would be given the opportunity to relocate to such replacement units in a new building and would be assessed the same rent as their previous unit. The Project would also enhance the diversity of Parkmerced by constructing a large number of new BMR affordable units. Currently, Parkmerced has no BMR units. Further, the proposed Project would enhance the character of the Parkmerced neighborhood by establishing a social and commercial core, improving pedestrian accessibility, and creating open space and recreational opportunities.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Project will result in the construction of a significant number of BMR housing units in accordance with the Development Agreement to be executed by the Project Sponsor and the City. Such BMR units will significantly increase the City's supply of affordable housing. Moreover, the affordability of the existing rent-controlled units would be maintained for all existing residents, who, under the terms of the proposed Development Agreement, would continue to benefit from the protections of the Rent Stabilization Ordinance, including residents of units proposed for replacement who elect to relocate to a new unit. For such relocated residents, the Project proposes that the new unit be rented at the same rent controlled rate as the resident's existing unit, thereby preserving affordability of the Project for existing residents. Under the terms of the proposed Development Agreement, the replacement unit would be subject to the same rent increase restrictions as contained in the Rent Stabilization Ordinance for the life of the building, regardless of whether an existing tenant elects to relocate to the unit or the unit is occupied by a new tenant.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking.

The proposed Project would enhance MUNI transit service by re-routing the MUNI M-Oceanview light-rail line through the Project Site, creating two new stations and relocating the existing Parkmerced/SFSU station. These improvements would alleviate the overcrowding issues at the existing Parkmerced/SFSU station and improve the connection to SFSU by requiring riders to cross Holloway Avenue as opposed to Nineteenth Avenue. The realignment would also reduce the walking distance to transit for residents of Parkmerced, thereby encouraging the use of public transportation. In addition, the proposed roadway re-alignments would ease the burden on City streets in the Parkmerced area by improving traffic flow. Finally, the proposed Project would add approximately 90 on-street and 6,252 off-street parking spaces, ensuring that residents of the proposed Project do not rely on parking in the adjoining neighborhoods.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Project would not displace any industrial or service sector uses because of new commercial office development since the existing buildings slated for demolition do not contain any industrial or service sector uses. The Project Site is currently occupied by residential apartment buildings.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed Project would help the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake because the new buildings would be constructed in accordance with all applicable building codes and regulations with regard to seismic safety.

- G) That landmark and historic buildings will be preserved:

The proposed Project would not adversely impact any City landmarks because there are no City-designated landmarks on the Project Site. Although none of the buildings on the Project Site are designated City landmarks, as mitigation for the Proposed Project's impacts to historic resources under the California Environmental Quality Act, the Project Sponsor will prepare documentation of the site based on the National Park Service's Historic American Building Survey/Historic American Engineering Record Historical Report Guidelines and provide a permanent display of interpretative materials concerning the history of the original Parkmerced complex.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The proposed Project would provide 68 acres of open space in a network of publicly accessible neighborhood parks, athletic fields, public plazas, greenways and a farm. The Project would provide significant additional open space in the form of private or semi-private open space areas such as centralized outdoor courtyards, roof decks, and balconies. These private and semi-private open spaces would be required within the development of each residential building within Parkmerced. The parks and open space would be more accessible and usable than the current open spaces. Parks and open space within, and in the vicinity of, the proposed Project would continue to receive a substantial amount of sunlight during the day when use is at its highest rate. Existing coastal views from parks located to the east and north of the Project Site would be maintained with implementation of the proposed Project.

3. The proposed long-range mixed-use development project is consistent with the requirements set forth in Planning Code Section 302, in that:

- a. The Project is necessary and desirable because it would enhance the lives of existing and future residents, and the City as a whole, by converting a single-use residential complex into a high-quality, mixed-use development that includes neighborhood-serving retail and numerous open space and recreational activities. The Project would also construct a significant amount of new housing units at an in-fill location within an existing urban environment and replace existing housing units that were constructed during the material shortages experienced during World War II and that are reaching the end of their useful life with new residential buildings that would be more energy efficient and meet current ADA requirements. The residential density that would result from the proposed in-fill housing is permitted by, and consistent with, the existing zoning of the Parkmerced site. With only 8,900 total housing units proposed, the Project would be smaller than the 10,302 units principally permitted by the existing zoning or the 11,750 housing units permitted through a Planned Unit Development. Additionally, the proposed Project would enhance alternatives to automobile use by making certain improvement to public transportation and by providing services to residents such as a shuttle to the Daly City BART station and carpool/vanpool services. Because a Special Use District is necessary in order to implement the proposed Project, and for the reasons set forth above, the Commission finds the requested amendments to the Planning Code, Zoning Maps, and General Plan to be required by public necessity, convenience and general welfare.

4. Findings under the California Environmental Quality Act (CEQA):

- a. On February 10, 2011, the Planning Commission, by Motion No. 18629, certified a Final Environmental Impact Report ("FEIR") for the Parkmerced Mixed-Use Development Program in compliance with CEQA, the CEQA Guidelines and Chapter 31, finding that the FEIR was completed in compliance with CEQA and was adequate, accurate and objective and reflected the independent judgment of the Planning Commission; a copy of the motion is on file with the Clerk of the Commission.
- b. Also on February 10, 2011, the Commission reviewed and considered the information contained in the FEIR and by Motion No. 18270 adopted CEQA Findings for the proposed Parkmerced Mixed-Use Development Program Project under CEQA, the CEQA Guidelines and Chapter 31, including the adoption of a mitigation monitoring and reporting program (MMRP) and a statement of overriding considerations, ("CEQA Findings"). The CEQA Findings for the proposed Project are on file with the Clerk of the Commission and are incorporated into this Motion b.

I hereby certify that the Planning Commission

Commission Secretary

AYES: Commissioners Antorini, Borden, Forq, and Miguel

NAYS: Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED: February 10, 2011



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable).

☒ Affordable Housing (Sec. 415)

☐ Jobs Housing Linkage Program (Sec. 413)

☐ Downtown Park Fee (Sec. 412)

☒ First Source Hiring (Admin. Code)

☐ Child Care Requirement (Sec. 414)

☒ Development Agreement

1630 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18272 Local Coastal Zone Permit Application

HEARING DATE: FEBRUARY 10, 2011

Project Name: Parkmerced Mixed-Use Development Program
P Case: Coastal Zone Permit
Case Number: 2008.0021EPMITZW
Initiated by: Seth Mallen, Parkmerced Investors, LLC
3711 - 19th Avenue
San Francisco, CA 94132
Staff Contact: Elizabeth Watty, Planner
Elizabeth.Watty@sfgov.org, 415-558-6620
Reviewed By: David Alumbaugh, Acting Director Citywide Planning
David.Alumbaugh@sfgov.org, 415-558-6601

ADOPTING FINDINGS RELATING TO APPROVAL OF A COASTAL ZONE PERMIT, PURSUANT TO PLANNING CODE SECTION 330, TO ALLOW THE FULL IMPLEMENTATION OF THE PARKMERCED MIXED-USE DEVELOPMENT PROGRAM, AS ADOPTED BY THE PLANNING COMMISSION AND INCORPORATED HEREIN BY REFERENCE AS THOUGH FULLY SET FORTH IN MOTION NO. 18270 AND RESOLUTION NO.S 18271 AND 18273. A PORTION OF THE PARKMERCED SITE, SPECIFICALLY LOTS 7309, 7309-A, 7334, 7337, and 7333, ARE LOCATED WITHIN THE LOCAL COASTAL ZONE; AND MAKING AND ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

PREAMBLE

On January 8, 2008, Seth Mallen of Steller Management (hereinafter "Project Sponsor"), submitted an Environmental Evaluation Application with the Planning Department (hereinafter "Department"), Case No. 2008.0021E; and

On May 12, 2010, the Draft Environmental Impact Report (DEIR) for the Project was prepared and published for public review; and

The Draft EIR was available for public comment until July 12, 2010; and

On February 10, 2011, the San Francisco Planning Commission (hereinafter "Commission") reviewed and considered the Final Environmental EIR (FEIR) and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

On February 10, 2011, the Commission certified the FEIR by Motion No. 18629, adopted approval findings pursuant to CEQA by Motion No. 18270 (Exhibit A); and adopted the Mitigation, Monitoring, and Reporting Program (MMRP) (Exhibit B to Motion No. 18270). The CEQA approval findings and the MMRP (Exhibits A and B, respectively, to Motion No. 18270) are incorporated herein by this reference thereto as if fully set forth in this Motion; and

On August 12, 2010, the Project Sponsor applied to the Planning Department for a Planning Code Text Amendment, a Zoning Reclassification and a General Plan Amendment (hereinafter Map Amendments) to allow for the creation and implementation of the Parkmerced Special Use District under Case No. 2008.0021MTZ; and

The proposed General Plan Amendments would make conforming amendments to the to the Urban Design Element's Map 4 to reflect the proposed rezoning; and

The proposed Zoning Reclassification would amend Zoning Map Sheets ZN13, HT13, and SU13 to rezone Parkmerced, being all of Assessor's blocks 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001; and 7370-001 from RM-1 (Residential Mixed, Low Density), RM-4 (Residential Mixed, High Density), & RH-1(D) (Residential House, One-Family, Detached) Districts, to PM (Parkmerced Residential (PM-R), Parkmerced Mixed Use - Social Heart (PM-MU1), Parkmerced Mixed Use - Neighborhood Commons (PM-MU2), Parkmerced School (PM-S), Parkmerced Community/Fitness (PM-CF), and Parkmerced Open Space (PM-OS) (hereinafter "Parkmerced Zoning Districts")); and

The proposed Planning Code Text Amendments would create Planning Code Section 249.64, the "Parkmerced Special Use District" (hereinafter "PMSUD"), amend Planning Code Section 270 to create a new Bulk District (PM) for the proposed Parkmerced Special Use District, and amend Planning Code Section 102.5 and 201 to include the Parkmerced Zoning Districts; and

On October 27, 2010 the Project Sponsor filed a Development Agreement Application after months of negotiations with the Mayor's Office of Workforce and Economic Development; and

The Commission conducted informational hearings on the Parkmerced Project and considered public comment on November 4, November 18, December 9, December 16, 2010, and on January 13, 2011; and

On January 10, 2011, the Project Sponsor filed a Coastal Zone Permit Application, to authorize the rezoning and development of Assessor's Blocks 7309, 7309-A, 7334, 7333 and 7337, portions of which are located within the Local Coastal Zone Permit Area; and

On January 13, 2011, the Commission passed Resolution No. 18255, initiating amendments to the Planning Code, Zoning Maps; and General Plan related to the proposed Project; and

On February 10, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the Motion; and

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff, and other interested parties; and

All pertinent documents associated with Case No. 2008.0021EPMTZW may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

Whereas, the Commission has reviewed the Motion; and

MOVED, that the Commission hereby authorizes the Local Coastal Zone Permit requested in Application No. 2008.0021EPMTZW, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. The Commission finds the Parkmerced Mixed-Use Development Program to be a beneficial development to the City that could not be accommodated without the actions requested.
3. The Parkmerced Development Project necessitates approval by the Planning Commission of a Local Coastal Zone Permit, since a portion of the Site (Assessor's Blocks 7309, 7309-A, 7334, 7337, and 7333) is included in the boundaries of the Local Coastal Zone. Specifically, the portion of the Site located within the Local Coastal Zone Area consists of the southern half of development block 02W (portion of APN 7309/7309-A), development block 03W (portion of APN 7334), the western edge of development block 04 (portion of APN 7337) and the western edge of development block 23 (portion of APN

7333). The project proposes to demolish existing two- and three-story residential buildings on development block 02W and 03W and to replace such buildings with three- and four-story residential buildings. The portions of development blocks 04 and 23 within the Local Coastal Zone Permit Area would be designated as open space under the proposed Project.

4. **Site Description and Present Use.** Parkmerced is bounded by Lake Merced Boulevard to the west, Brotherhood Way to the south, Junipero Serra Boulevard, Felix Avenue, Cambon Drive, and 19th Avenue to the east, and Holloway Avenue, Varela Avenue, Serrano Drive, Font Boulevard, Pinto Avenue, and Vidal Drive to the north; it is within the RM-1 (Residential Mixed, Low-Density), RM-4 (Residential Mixed, High-Density), and RH-1(D) (Residential House, One-Family, Detached) Districts and 40-X and 130-D Height and Bulk Districts.

The Site measures 152-acres in total (including streets), and is defined by an axial street grid with a large open space in the center and a series of "pie-shaped" residential blocks. The residential units on each of these blocks surround a central courtyard open to the sky. The development is also articulated by landscaped boulevards and secondary streets that weave around buildings, open spaces, and larger open spaces in the vicinity of the tower buildings. The Site contains 3,221 existing rental apartments in 170 two-story residential buildings (townhouses) and 11 residential tower buildings that are 13 stories tall, as well as associated parking, buildings services, a leasing/operations office and a private pre-school/day care facility. There are also about 75 acres of existing open space throughout the Project Site in a network of lawns, courtyard areas, private open space, and playgrounds.

Parking for the residential apartments in the towers is currently provided in three above-grade centralized parking garages, which accommodate a total of 1,540 parking stalls. Parking for the townhouses is provided in attached carports, which provide a total of 1,507 parking spaces. An additional 151 parking spaces used for maintenance and office parking are provided in a surface parking lot. In addition to the 3,198 total private off-street parking spaces, there are 1,591 existing public on-street parking spaces.

As noted in the submitted Historic Resource Evaluation (HRE), the Parkmerced rental complex was constructed between 1941 and 1951 as the first all-rental community in San Francisco, as a response to the continued demand for housing the United States during and after World War II.¹ The buildings and site plan at Parkmerced were designed by Leonard Schultze & Associates for the Metropolitan Life Insurance Company (MetLife), while the landscaping of the open space and interior garden courtyards were designed by Thomas Church and other landscape architects from his office.

¹ "Historic Resource Evaluation & Cultural Landscape Assessment: Parkmerced" (April 29, 2009), prepared for Turnstone Consulting by Page & Turnbull, Inc. Available by request at the San Francisco Planning Department (1650 Mission Street, Suite 400, San Francisco, CA 94103) in the Case Docket for Case No. 2008.0021R. The document is referred to as the "Parkmerced HRE."

5. **Surrounding Properties and Neighborhood.** The 152-acre Site is located in the Lakeshore Neighborhood, in the southwest corner of San Francisco. The surrounding neighborhood includes Stonestown Galleria and San Francisco State University to the north; the Lakeside and Ingleside Terrace neighborhoods to the east; the Brotherhood Way religious and scholastic institutions, San Francisco Golf Club, and a residential neighborhood to the south; and Lake Merced and the Fleming and Harding Park Golf Courses to the west.

6. **Project Description Overview**

The proposed Project is a long-term (approximately 20-30 years) mixed-use development program to comprehensively re-plan and re-design the approximately 116-acre Site (152-acres including streets). The Project proposes to increase the residential density, provide new commercial and retail services, provide new transit facilities, and improve existing utilities within the development Site. Of the existing 3,221 residential units on the Site, approximately 1,683 units located within the 11 existing towers would remain and approximately 1,538 existing apartments would be demolished and replaced in phases over the approximately 20 to 30-year development period. As provided by the proposed Development Agreement, these replacement units would be subject to the San Francisco Rent Stabilization Ordinance and existing tenants in the to-be-replaced buildings would have rights to relocate into the new units at their existing rents. An additional 5,679 net new units would also be added to the Site for a Project total of 8,900 units. New buildings on the Site would range in height from 35 feet to 145 feet, and would not be taller than the existing towers, which will remain. Neighborhood-serving retail and office space would also be constructed as part of the proposed Project and concentrated on Crespí Drive, near the northeast part of the Site and the light-rail line. The proposed new neighborhood core would be located within walking distance of all the residences within Parkmerced. In addition, small neighborhood-serving retail establishments would be constructed outside of the neighborhood core, in proximity to residential units throughout the Site. A new preschool/elementary school and daycare facility site, fitness center, and new open space uses including athletic fields, walking and biking paths, a new farm, and community gardens would also be provided on the Project Site. Infrastructure improvements would include the installation of a bioswale system to process stormwater on-site and renewable energy sources, such as wind turbines and photovoltaic cells, which are detailed in the *Sustainability Plan*. Transportation improvements would include the realignment of the MUNI light rail-line through the Project Site, traffic improvements to intersections adjacent to the Project Site, provision of a free shuttle service to Daly City BART and other items detailed in the *Transportation Plan*.

The Plan Documents

There are five guiding documents that combine to create a comprehensive and detailed blueprint for guiding all future land use, building, and community infrastructure improvements and programs at Parkmerced. These documents provide technical

specifications, development are incorporated by reference into both the Development Agreement and the Planning Code.

The Vision Plan lays out a conceptual framework for transforming the existing Parkmerced housing development into a "21st century model of a healthy neighborhood".

The Design Standards and Guidelines prescribe urban design controls for land use, open spaces, streets, blocks and individual buildings. It contains the Regulating Plan which establishes the physical boundaries and measurements for all streets, blocks, parcels, open spaces, buildable areas, and easements. It also outlines a process for project implementation, establishing a design review process for buildings that limits the modifications from the standards, and specifies the Planning Commission and public review processes for the design of large projects and community improvements.

The Sustainability Plan contains specific strategies and metrics which together address the management and conservation of energy, water and other natural resources, and also establishes goals for green building standards.

The Transportation Plan provides a framework and management plan for addressing transit and vehicular travel to and from the neighborhood.

The Infrastructure Report establishes an outline for anticipated site-wide improvements to all street and public rights-of-way, underground utilities, and grading, and includes detailed engineering plans for those improvements.

Land Use, Urban Design, and Building Form

The Parkmerced Mixed-Use Development Program includes the retention of the 11 existing tower buildings, and the construction of approximately 5,679 net new units. The new units will be constructed in new buildings that will be compatible with the existing structures, and will vary in height and design. The siting of new structures has been designed in such a way so to cluster new towers within existing towers' sight-lines from the residential neighborhoods to the east, in order to preserve views of Lake Merced and the Pacific Ocean from the adjacent neighborhoods. Parkmerced would be redesigned to increase clarity for travelers by creating a more legible hierarchy of street types, and by providing a grid that is easier to navigate. With a prevailing neighborhood fabric of 4-to-6 stories, taller structures of 8-10 stories will be located at key intersections and adjacent to notable locations and spaces to define centers of activity, provide landmarks and clarity for movement, and activate public spaces. Denser and taller development would be generally concentrated on the east half of the site, closer to 19th Avenue and the MUNI light-rail to emphasize connection to public transit and this major transportation corridor, while tapering down in intensity toward the west. The design includes the following features:

- Street grid adjusted to reduce scale of blocks and improve circulation - introduction of new streets, alleys, and pedestrian paseos, realignment of some existing streets. Key elements of the original street grid design are preserved,

including Juan Bautista Circle at the center with streets radiating outward, and Font Blvd as a major ceremonial connector. Gonzalez Drive is realigned as a major Boulevard on the south to improve circulation, organize major open spaces, and make room for creation of major public open space.

- Existing towers will remain. Low-rise 2-3 story buildings will all be replaced by street-facing buildings ranging in height from 35 to 145 feet. New towers will be clustered near the existing towers, in order to maintain existing view-sheds.
- In general, higher density and taller buildings will be located on the eastern half of the Site, closer to 19th Avenue and public transit (streetcar). The predominant neighborhood scale on the eastern half is a 65-foot (6-story) base, and 45 feet (4 stories) on the western half. These bases are punctuated by taller structures at key intersections and locations to provide wayfinding and highlight key public places, as well as provide diversity and texture in the urban fabric. Smaller streets on the west side would be lined by 3-story buildings.
- Except in the neighborhood commercial core, all buildings will have mandated landscaped setbacks and be lined on the ground floor with walk-up townhouse units that have individual front doors directly accessing the sidewalks.
- A new pedestrian-oriented neighborhood commercial area typical of San Francisco neighborhoods (with housing above ground floor retail), which will include a full-service supermarket, will be created at the northeast quadrant of the neighborhood, focused on a re-aligned Crespi Drive. Additional small, neighborhood retail (e.g. café, dry cleaners) would be sited adjacent to the neighborhood commons parks scattered around the Site. All residents would be within a short (5 minute) walk of supporting services.
- The overall neighborhood density proposed is approximately 59 units per acre, as compared to 40 units per acre in the Mission District and 86 units per acre in the Chinatown and North Beach Districts. This density is necessary to provide support for neighborhood shops and services within walking distance, as well as facilitate the use of transit, bicycling, and walking for daily activities.

Open Space

The proposed Project would provide 68 acres of open space in a network of publically accessible neighborhood parks, athletic fields, public plazas, greenways and a farm, and in the form of private or semi-private open space areas such as centralized outdoor courtyards, roof decks, and balconies. These private and semi-private open spaces would be required with the development of each residential building within Parkmerced. The parks and open space would be more accessible and usable than the current public open spaces, which are predominantly characterized by wide street medians and undefined and un-programmed lawn areas surrounding towers. Most open space is currently provided in the form of semi-private interior-block shared courtyards. Parks and open space within, and in the vicinity of, the proposed Project would continue to receive a substantial amount of sunlight during the day when use is at its highest rate. Existing coastal views from parks located to the east and north of the Project Site would be maintained with implementation of the proposed Project. The main public open space would include:

- *Neighborhood Commons:* Six of these 0.35-acre neighborhood-scale parks (2.1-acres total) would be evenly distributed around the neighborhood to provide social gathering spaces and opportunity for passive and active recreation within a 2-minute walk of almost every resident. These spaces would be activated by small retail or community uses, like cafes, in adjacent buildings.
- *Transit Plaza:* A new 0.88-acre public plaza with ancillary small retail at the northeast corner of the Site at Holloway/19th Avenue would feature a relocated City College/Parkmerced station for the MUNI light-rail, providing a better and safer waiting environment for passengers than the existing station in the middle of 19th Avenue.
- *Diaz Plaza:* This small street in the neighborhood commercial heart would be pedestrianized into an active 0.34-acre plaza, with restaurants and shops opening out onto the plaza and activating the space.
- *Juan Bautista Circle:* The historic 2.44-acre circle would be renovated with new landscaping and amenities, including a pond (and underground cistern) to collect stormwater and serve as a major ecological feature to feed water into the stream system that leads through the Site to Lake Merced.
- *Stream Corridor:* Leading from the Circle toward Lake Merced, the stream corridor is the backbone of the open space system, connecting the major open spaces and providing a greenway through the heart of the neighborhood. Walking paths and passive recreational open spaces are proposed along the corridor, which would also provide important wildlife habitat. Including the Farm and the Belvedere Garden (see below), the Stream Corridor would be 12.06-acres.
- *Farm and Orchard:* The over 2-acre farm, which may be managed by a professional farmer, is intended to be a productive landscape to supply local farmers' markets and restaurants with organic, locally-grown produce, and would utilize local on-site compost to reduce resource consumption of trucking food waste from the neighborhood. The farm would also provide educational and hands-on opportunities for residents.
- *Belvedere Garden:* A new garden overlook and terraced steps with water feature would provide a new direct pedestrian link from the neighborhood through the southwest corner of the Site to the major open spaces at Lake Merced.
- *Athletic Fields:* The 2.94-acre athletic fields would provide an opportunity for active recreation (e.g. soccer) in the neighborhood, as well as for adjacent off-site neighbors along Brotherhood Way, such as school and church groups: (a new pedestrian connection is proposed to connect to Brotherhood Way).
- *Community Garden:* The existing small community garden located near the towers to the west of Juan Bautista Circle would be significantly expanded to 1.1-

acres, offering many more residents, particularly those in towers and other units without private open space, the opportunity to garden.

In addition to these public open spaces, all new units would be required to provide either 36 square feet of private open space (e.g. balconies, private patios, stoops) or 48 square feet of shared common open space (e.g. courtyards, roof decks). Almost every block would include a shared semi-private courtyard, as delineated in the Regulating Plans.

Most open spaces would be, as currently, owned by the developer or future Master Homeowners' Association. Through the Development Agreement, these spaces would be required to be maintained in good condition in perpetuity, and would guarantee the rights of the public to use the spaces as they would any City park and establish minimum hours of operation.

Transportation

The comprehensive transportation program proposes to improve conditions for all modes of movement, and supports the objective of growing the neighborhood as a transit- and pedestrian-oriented district. The proposed improvements are as follows:

Pedestrian: A revised street grid providing smaller blocks, new streets, and mid-block paths for more direct and shorter connections for those on foot. All interior streets would be redesigned to exceed the minimum specifications of the Better Streets Plan for sidewalk width, amenities, and traffic calming. On the periphery of the neighborhood, several additional and safer crossings of the major streets are proposed on Lake Merced Boulevard, Brotherhood Way, and 19th Avenue. Finally, the land use program, with both increased residential density and a retail program, will provide and support services within walking distance.

Bicycle: New dedicated bicycle lanes and paths would be provided on Gonzalez Drive, Tapla Drive, Font Boulevard, Chumasero Drive, and Juan Bautista Circle to provide safe and direct connections for cyclists to important destinations and to link up with existing and planned bicycle routes outside of the neighborhood and at SFSU. Additionally, a new direct connection toward the Daly City BART station would be made possible by the reconfiguration of the interchange of Junipero Serra and Brotherhood Way.

Transit: The Project proposes to re-route the MUNI light-rail line, which currently runs in the middle of 19th Avenue, through Parkmerced, to relocate one station from the middle of 19th Avenue to within the Site and to create two new stations. This alignment has been coordinated with SFMTA and offers several operational advantages for transit service (such as being able to run short-lines that do not continue all the way through low-ridership areas to Balboa Park), in addition to better serving in a safer, more pleasant, and more convenient environment the majority of the riders in this area, who come from the west side of 19th Avenue at Parkmerced and SFSU. SFMTA would have the option of running trains all the way through to Balboa Park or terminating at Parkmerced. The Project proposes to dedicate necessary right-of-way easements and to build the infrastructure for this realignment. The Project also dedicates easements for a future extension of the light-rail line toward the Daly City BART station. Finally, the Project

proposes to fund the purchase by the SFMTA of one light-rail vehicle in order to maintain headways.

Vehicular: The current limited and circuitous access to the neighborhood would be enhanced by providing new access points with new or reconfigured intersections along Lake Merced (at Gonzalez, Acevedo, and Vidal), on Brotherhood Way (at Chumaseero), on Junipero Serra (at Chumaseero), and on 19th Avenue (at Crespi Drive). Other improvements are proposed at nearby intersections and sections of road to improve circulation, including but not limited to the addition of turn lanes and signalization changes.

Many of these improvements would require approval of the San Francisco Municipal Transit Authority (SFMTA), the California Public Utilities Commission (CPUC), and Caltrans; the Development Agreement includes provisions for seeking these approvals, and for proposing and implementing alternative projects that achieve equivalent public benefits should the proposals not garner necessary approvals from outside agencies. Per the Development Agreement, the developer must get necessary approvals and permits for the rail project within 7 years after the approval of the Agreement and must begin construction on the rail project by the time 2,500 new dwelling units have been constructed. Note that the first two years of the time period are reserved for the City to consider further modifications to the alignment based on ongoing studies of the 19th Avenue corridor ("Tier 5") (within funding provided in part by the Project Sponsor), and that construction of the rail project must be phased to allow later modification per Tier 5.

The Transportation Plan also includes a comprehensive Transportation Demand Management (TDM) program that obligates the Developer to undertake certain programs and services, including free shuttles to Daly City BART and nearby shopping centers, transit pass subsidies of \$20 per unit per month, a Transportation Coordinator to assist residents and employees of the Site, and implementation of a bicycle-share program.

Off-street parking for the residential units will primarily, but not exclusively be in underground garages, and will be concentrated on the west side of the Site (while units are concentrated toward the eastern half) to discourage casual usage. As parking would be unbundled and market-priced, occupants who wish to have parking space would have the option to pay less to park further away from their residence. Per the proposed SUD, parking could be provided up to one space per dwelling unit and non-residential parking would be capped generally at one space per 750 square feet (with some variation for specific uses). (Note that off-street parking would not strictly be required for any use per the SUD).

The *Transportation Plan* fully details goals and implementation actions for the Project.

Housing and Tenant Relocation

There are 3,221 dwelling units currently on-site. The housing stock is limited to two types: 2-3-story garden apartments (48% of total - 1,538 units) and 13-story tower

apartments (52% of total – 1683 units). Of the existing units, 35% are one-bedroom units, 58% are two-bedroom units, and 7% are three-bedroom units.

The proposed Project would demolish all of the existing garden apartments and replace them with a much broader mixture and variety of housing and building types, including units of various types in 3- to 6-story low rise buildings, 8- to 10-story mid-rise buildings, and 11- to 14-story towers. The Project would replace the existing units and add a net addition of approximately 5,679 units for a total of 8,900 units on-site. The percentage of one-bedroom units would remain at 35%, but there would be a larger percentage (15%) of three-bedroom units. Overall, the proportion of units in towers would decrease from 52.2% today to 34.4% as proposed. As the base of almost all new buildings will be lined with residential units, approximately 800 of the new units will be in the form of ground-level, walk-up units with direct, individual private access to sidewalks, front stoops, and/or courtyards.

The existing apartments slated for demolition are primarily wood-framed and stucco structures. To the extent practical, the existing structures will be “deconstructed”, allowing for maximum re-use or recycling of materials. The feasibility of materials reused or recycled may be limited by the requirements for abatement of hazardous materials and the potential value of the recycled material. The proposed demolition and deconstruction will occur in conjunction with the construction phases over the 20- to 30-year development period.

Under the proposed Development Agreement, the Project would replace, on a one-for-one basis, the 1,538 existing units subject to the Rent Stabilization Ordinance that would be demolished as part of the proposed Project. All existing tenants in these units would be offered a newly-constructed unit of comparable size (all with new appliances, including washers, dryers, and dishwashers) at their existing rents, and all relocation expenses would be paid for by the Project Sponsor. Prior to the submittal of a permit for a Replacement Building, the Developer is required to submit a Tenant Relocation Plan to the City, outlining the existing to-be-demolished units, the number of existing tenants and estimated schedule for the relocation. The Development Agreement outlines a detailed notification and new-unit selection process.

Sustainability

A key objective of the Project is to create a neighborhood that substantially improves the resource efficiency of both the existing development and future growth. The moderate-density housing, mixed-use land use, fine-grained urban design, and transit-oriented transportation program, described above, aim to substantially reduce the per capita amount of vehicular travel, which currently makes up the largest share (40%) of Bay Area greenhouse gas emissions. Besides these measures that are the basis for the Project, the Project would reduce environmental impacts of the existing Site and its growth through the following measures, amongst others:

Energy: The project has a goal of “Net Zero” energy usage for new development. To help strive toward this goal, the Project is committed to numerous renewable energy

production and efficiency measures. In accordance with the Development Agreement, the project would install renewable energy sources (e.g. photovoltaic cells or wind turbines) capable of providing 10% of the total estimated annual energy consumed by the Site, and cogeneration facilities capable of providing an additional 10% of the total estimated annual energy consumed. The project has also committed to construct all new buildings to improve on current Title 24 energy standards for residential building envelopes by at least 15% and all other Title 24 energy standards by at least 10%.

Water: The Project proposes to reduce stormwater runoff into the combined sewer system (thereby reducing demand on the sewer and treatment infrastructure, as well as reducing frequency of discharge of untreated runoff into the ocean) by collecting and slowing the runoff of stormwater in an extensive system of in-street bio-swales, the Juan Bautista Circle pond and cistern, and the stream corridor. This system would partially restore historical stream flows from the Site into Lake Merced, replenishing the aquifer and improving water quality and water levels in Lake Merced. The Project is also located in the City's Recycled Water Ordinance area, requiring that all new buildings be dual-plumbed for delivery of non-potable water for toilet flushing, building mechanical systems, irrigation and other non-potable water uses. The Project proposes to install recycled water distribution infrastructure (i.e. piping) throughout the project's right-of-ways and connecting to new buildings, so that in the future the Project can connect to planned SFPUC recycled water supply systems (e.g. potentially running up Lake Merced Boulevard). This would substantially reduce demand from the Site for potable water from the City's Hetch Hetchy system. The Project will reduce water consumption by up to 60% on a per capita basis.

The *Sustainability Plan* fully details goals and implementation actions for the Project.

7. Elements of Project Located Within the Local Coastal Zone. The elements on the Project, as described above, to be located within the Local Coastal Zone area subject to the City's jurisdiction include:
 - Demolition of existing two- and three-story "garden apartments" and replacement with three- and four-story residential buildings to be constructed in accordance with the sustainability measures applicable to the entire Project;
 - Protections for existing tenants, including the tenant relocation and rent control provisions described above, shall apply to all residential construction in the Local Coastal Zone;
 - Construction of bioswales associated with each building to treat stormwater run-off on-site;
 - Enhancement of existing open space, including the creation of Belvedere Gardens and a portion of the Stream Corridor; and

- Establishing an additional access point and pedestrian crossing location to the Project Site from Lake Merced Boulevard at Gonzalez Drive, and making traffic improvements to the intersection of Lake Merced Boulevard and Higuera Avenue.

Although the Project contemplates the installation of wind turbines along the western edge of the Project Site to meet the energy generation requirements contained in the Development Agreement, the wind turbines are not included in the current Coastal Zone Permit application. The Project Sponsor will seek a separate Coastal Zone Permit for the wind turbines when required for their construction.

8. **Public Comment.** The Department has received a substantial amount of public testimony regarding the Project, both in support and opposition. Many of these comments were received during the public informational hearings held for this project (October 21, 2010, November 4, 18, 2010, December 9, 16, 2010, and January 13, 2011) and as part of the EIR process.
9. **Planning Code Section 330 – Local Coastal Zone Permit Review**

The Parkmerced Mixed-Use Development Project necessitates approval by the Planning Commission of a Local Coastal Zone Permit, including findings of consistency with the Western Shoreline Area Plan of the General Plan (San Francisco's Local Coastal Program), pursuant to Planning Code Section 330, since a portion of the Site (Assessor's Blocks 7309, 7309-A, 7334, 7337, and 7333) is included in the boundaries of the Local Coastal Zone. Specifically, the portion of the Site located within the Local Coastal Zone Area consists of the southern half of development block 02W (portion of APN 7309/7309-A), development block 03W (portion of APN 7334), the western edge of development block 04 (portion of APN 7337) and the western edge of development block 23 (portion of APN 7333). The project proposes to demolish existing two- and three-story residential buildings on development block 02W and 03W and to replace such buildings with three- and four-story residential buildings. The portions of development blocks 04 and 23 within the Local Coastal Zone Permit Area would be designated as open space under the proposed Project.

A small portion of the southwest corner of the Project Site at the intersection of Lake Merced Boulevard and Brotherhood Way is located within the Coastal Zone area that is under the jurisdiction of the California Coastal Commission; because the latter portion is not under the City and County of San Francisco's jurisdiction with regard to Coastal Zone review, the Project Sponsor will seek approvals separately to the Coastal Commission prior to any improvements to that land.

10. **Planning Code Section 302.** Pursuant to Planning Code Section 330.5(4), the Local Coastal Zone Permit Application shall be reviewed by the Commission subject to the procedures for reviewing Planning Code Amendments, as outlined in Planning Code Section 302. On balance, the Project is found to be consistent with said criteria in that

- a. The Commission finds the Parkmerced Mixed-Use Development Program to be a beneficial development to the City that could not be accommodated without the actions requested.
- b. Parkmerced was constructed in the 1940s and early 1950s based on a model of separation of land uses, extensive reliance on the automobile for all purposes, and an insular circulation system featuring few connections to the wider city context. These patterns of development have proven to be unsustainable and exacerbate local and regional problems of transportation, air quality, and energy consumption and embody characteristics that do not meet the needs of today and the future to support sustainable growth.
- c. Assembly Bill 32 set statewide goals for greenhouse gas reductions and Senate Bill 375 further requires local regions and municipalities to coordinate land use and transportation plans to reduce greenhouse gas emissions. In the Bay Area, according to the Bay Area Air Quality Management District, 40% of greenhouse gas emissions come from transportation, primarily private vehicle travel. The average Bay Area household drives 18,000 miles per year. Low residential density and lack of mixed uses that prevent trips from being effectively served by public transit or made by walking or bicycling are the primary reasons for high Vehicle Miles Travelled (VMT) for Bay Area households. Regional growth will occur, and it is the duty of every Bay Area city to direct growth to infill areas that are supported by necessary services and well-served by public transportation and that do not expand the footprint of existing urbanized areas.
- d. The proposed infill Project density of 59 units per acre, incorporation of neighborhood-serving retail into a neighborhood center, and retrofitting of the block pattern to reduce block size, is more typical of San Francisco neighborhoods with low VMT. Based on consistent data from similar neighborhoods locally and throughout the country, the VMT of households in such a neighborhood is expected to be less than 10,000 miles per year.
- e. Parkmerced is already well situated with regard to public transit infrastructure, as it sits adjacent to MUNI light rail service on 19th Avenue, is served by several MUNI bus lines, and is close to the Daly City BART station. It is currently substantially underbuilt based on existing zoning. It is one of the best situated areas on the west side of the City to absorb growth in a transit-oriented and sustainable fashion, and its ownership under a single entity provides a rare opportunity to consider a long-term master plan for reconfiguration and improvement to meet the needs of the 21st century and beyond.
- f. The proposed transportation investments as part of the Project, including MUNI rail re-alignment through the Project Site, would further improve service to the area and provide more operational options to the San Francisco Metropolitan Transit Authority (hereinafter, "MTA"). The proposal has been well-coordinated with MTA, paves the way and provides a down-payment for more long-term "Tier 5" options, and the Development Agreement paves the way for evaluating

and incorporating additional Tier 5 options by the City. Without this Project, the City may not be able to achieve the necessary transportation improvements in the 19th Avenue corridor.

- g. The existing Parkmerced landscape is resource consumptive in its expansive use of manicured mono-cultural lawns, and the original neighborhood and landscape design directly disrupted and degraded ecological functions, particularly by diverting rainwater flow away from the underground aquifer and Lake Merced. The proposed Parkmerced Mixed-Use Development Program will result in a landscape that is both environmentally and financially sustainable and restores degraded systems. Improvements include creation of a system of bioswales and cisterns to direct stormwater into a restored creek corridor feeding into Lake Merced and/or the underlying groundwater basin. In addition, the proposed Parkmerced Mixed-Use Development Program will result in the generation of 20% of the total annual energy consumed by the Project, through the installation of renewable energy sources (such as photovoltaic cells and wind turbines) and cogeneration facilities.
- h. The existing neighborhood, while giving the impression of expansive open space, has little usable public open space. Its publicly-accessible green spaces are primarily comprised of snippets and in-between spaces such as roadway medians, building setbacks and undefined planted areas separating towers. The proposed Project would re-design the open space system to create distinct public open spaces in the form of both a larger connected network of major public open spaces, including a creek corridor, athletic fields, and farm, as well as smaller dispersed neighborhood parks activated by adjacent community uses and small-scale retail.
- i. The Parkmerced Mixed-Use Development Program would result in increased rental and for-sale housing of various sizes and income levels, and would provide a great diversity of housing types to meet the needs of a broad spectrum of household types. The proposal would provide a broader range of building and unit types than exist today. Whereas 7% of current units have three bedrooms, the proposed project would include 15% 3-bedroom units. While today over 52% of existing units are in the 13-story towers, upon full build-out, fewer than 35% of all units will be in towers of 11-14 stories.
- j. Under the terms of the proposed Development Agreement, the Project would replace, on a one-for-one basis, the 1,538 existing units subject to the City's Residential Rent Stabilization and Arbitration Ordinance (hereinafter, "Rent Stabilization Ordinance") that would be demolished as part of the proposed Project with 1,538 "replacement units" of comparable size in newly constructed buildings. All existing tenants in these to-be-demolished units would be offered a replacement unit of comparable size at their existing rents, all relocation expenses would be paid for by the Project Sponsor, and, as set forth in the proposed Development Agreement, the replacement unit would be subject to the provisions of the Rent Stabilization Ordinance for the life of the building.

Replacement units in the new buildings would be chosen by existing tenants on a seniority basis. Under the proposed Development Agreement, to the extent that any of the 1,538 replacement units are not occupied by an existing tenant who has elected to relocate, the replacement unit will be made available to a new tenant and will also be subject to the provisions of the Rent Stabilization Ordinance for the life of the building. The project sponsor will pay relocation expenses to existing tenants who choose not to relocate into a replacement unit.

- k. The Parkmerced Mixed-Use Development Program would result in an entire neighborhood completely built in conformity with the City's recently-adopted Better Streets Plan, providing an excellent pedestrian environment.
 - l. The Parkmerced Mixed-Use Development Program would result in numerous public improvements to the intersections adjacent to and surrounding Parkmerced, providing circulation benefits not just for Parkmerced but for the wider community.
 - m. The Parkmerced Mixed-Use Development Program would create a social heart for the community, and would create a traditional pedestrian-oriented neighborhood commercial district within close walking distance of all Parkmerced residents. The proposed Parkmerced Mixed-Use Development Program would result in 1,500 permanent jobs.
 - n. The proposed Project includes a comprehensive program for environmental sustainability, seeking to minimize any growth in water or energy use, to accommodate new growth by constructing infrastructure in a manner that will allow connection to future recycled water supplies, and by committing to invest in renewable energy infrastructure and efficiency measures that are above and beyond existing requirements.
 - o. The Parkmerced Mixed-Use Development Program establishes a detailed design review process for buildings and community improvements.
 - p. The Local Coastal Permit is necessary in order to approve the Parkmerced Mixed-Use Development Program.
11. General Plan Compliance. The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

WESTERN SHORELINE AREA PLAN

Lake Merced

Objectives and Policies

OBJECTIVE 5:

PRESERVE THE RECREATIONAL AND NATURAL HABITAT OF LAKE MERCED.

Policy 5.1

Preserve in a safe, attractive and usable condition the recreational facilities, passive activities, playgrounds and vistas of Lake Merced area for the enjoyment of citizens and visitors to the city.

Policy 5.2

Maintain a recreational pathway around the lake designed for multiple use.

Policy 5.3

Allow only those activities in Lake Merced area which will not threaten the quality of the water as a standby reservoir for emergency use.

The Parkmerced Mixed-Use Development Program includes the retention of the 11 existing tower buildings, and the construction of approximately 5,679 net new units. The siting of new structures has been designed in such a way so to cluster new towers within existing towers' sight-lines from the residential neighborhoods to the east, in order to preserve views of Lake Merced and the Pacific Ocean.

On the periphery of the neighborhood, a new garden overlook and terraced steps with water feature (Belvedere Garden) would provide a new direct pedestrian link from the neighborhood through the southwest corner of the Site to the major open spaces at Lake Merced, making Lake Merced's pathway more usable and accessible to residents living to the east of the Lake.

The Project proposes to reduce stormwater runoff into the combined sewer system (thereby reducing demand on the sewer and treatment infrastructure, as well as reducing frequency of discharge of untreated runoff into the ocean) by collecting and slowing the runoff of stormwater in an extensive system of in-street bio-swales, the Juan Bautista Circle pond and cistern, and the stream corridor. This system would partially restore historical stream flows from the Site into Lake Merced, replenishing the aquifer and improving water quality and water levels in Lake Merced. Any and all construction activities in the Local Coastal Zone (and elsewhere on the Project Site) will comply with mitigation measures set forth in the FEIR, protecting against construction-site run-off to Lake Merced.

12. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project complies with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposed Project would enhance the neighborhood-serving retail uses by creating a neighborhood-serving retail core with approximately 230,000 square feet of new retail space, thereby providing the community with services such as a grocery store and banking. The existing Parkmerced development currently has only a very small amount of neighborhood-

servicing retail, which is located adjacent to the Project Site. In combination with the proposed approximately 69,000 square feet of new office space, the new retail uses would provide opportunities for resident employment and business ownership. Furthermore, the proposed addition of 5,679 net new households would strengthen business at existing establishments in the vicinity of the Project Site and bolster demand for additional retail uses.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The proposed Project would preserve the existing diversity and character of Parkmerced by maintaining the same number of rent controlled units (3,221 rent controlled units) that currently exist at Parkmerced. The Project would accomplish this by conserving 1,683 existing rent controlled apartments, which would remain subject to the Rent Stabilization Ordinance, and replacing all 1,538 existing rent controlled apartments that would be demolished by the Project with a new unit that would be subject to the same protections as contained in the Rent Stabilization Ordinance for the life of the building. In addition, under the proposed Project, residents of buildings proposed for demolition would be given the opportunity to relocate to such replacement units in a new building and would be assessed the same rent as their previous unit. The Project would also enhance the diversity of Parkmerced by constructing a large number of new BMR affordable units. Currently, Parkmerced has no BMR units. Further, the proposed Project would enhance the character of the Parkmerced neighborhood by establishing a social and commercial core, improving pedestrian accessibility, and creating open space and recreational opportunities.

- C. That the City's supply of affordable housing be preserved and enhanced,

The proposed Project will result in the construction of a significant number of BMR housing units in accordance with the Development Agreement to be executed by the Project Sponsor and the City. Such BMR units will significantly increase the City's supply of affordable housing. Moreover, the affordability of the existing rent-controlled units would be maintained for all existing residents, who, under the terms of the proposed Development Agreement, would continue to benefit from the protections of the Rent Stabilization Ordinance, including residents of units proposed for replacement who elect to relocate to a new unit. For such relocated residents, the Project proposes that the new unit be rented at the same rent controlled rate as the resident's existing unit, thereby preserving affordability of the Project for existing residents. Under the proposed Development Agreement, the replacement unit would be subject to the same rent increase restrictions as contained in the Rent Stabilization Ordinance for the life of the building, regardless of whether an existing tenant elects to relocate to the unit or the unit is occupied by a new tenant.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The proposed Project would enhance MUNI transit service by re-routing the MUNI M-Oceanview light-rail line through the Project Site, creating two new stations and relocating

the existing Parkmerced/SFSU station. These improvements would alleviate the overcrowding issues at the existing Parkmerced/SFSU station and improve the connection to SFSU by requiring riders to cross Holloway Avenue as opposed to Nineteenth Avenue. The realignment would also reduce the walking distance to transit for residents of Parkmerced, thereby encouraging the use of public transportation. In addition, the proposed roadway realignments would ease the burden on City streets in the Parkmerced area by improving traffic flow. Finally, the proposed Project would add approximately 90 on-street and 6,252 off-street parking spaces, ensuring that residents of the proposed Project do not rely on parking in the adjoining neighborhoods.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The proposed Project would not displace any industrial or service sector uses because of new commercial office development since the existing buildings slated for demolition do not contain any industrial or service sector uses. The Project Site is currently occupied by residential apartment buildings.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed Project would help the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake because the new buildings would be constructed in accordance with all applicable building codes and regulations with regard to seismic safety.

- G. That landmarks and historic buildings be preserved.

The proposed Project would not adversely impact any City landmarks because there are no registered landmarks on the Project Site. Although none of the buildings on the Project Site are designated City landmarks, as mitigation for the Proposed Project's impacts to historic resources under the California Environmental Quality Act, the Project Sponsor will prepare documentation of the site based on the National Park Service's Historic American Building Survey/Historic American Engineering Record Historical Report Guidelines and provide a permanent display of interpretative materials concerning the history of the original Parkmerced complex.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The proposed Project would provide 68 acres of open space in a network of publically accessible neighborhood parks, athletic fields, public plazas, greenways and a farm. The Project would provide significant additional open space in the form of private or semi-private

open space areas such as outdoor courtyards, roof decks, and balconies. These private and semi-private open spaces would be required within the development of each residential building within Parkmerced. The parks and open space would be more accessible and usable than the current open spaces. Parks and open space within, and in the vicinity of, the proposed Project would continue to receive a substantial amount of sunlight during the day when use is at its highest rate. Existing coastal views from parks located to the east and north of the Project Site would be maintained with implementation of the proposed Project.

13. The Commission hereby finds that approval of the Local Coastal Zone Permit Application would promote the health, safety and welfare of the City.
14. Findings under the California Environmental Quality Act (CEQA): On February 10, 2011, the Commission reviewed and considered the information contained in the FEIR and by Motion No. 18270 adopted CEQA Findings for the proposed Parkmerced Mixed-Use Development Program Project under CEQA, the CEQA Guidelines and Chapter 31, including the adoption of a mitigation monitoring and reporting program (MMRP) and a statement of overriding considerations, ("CEQA Findings"). The CEQA Findings and MMRP for the proposed Project are on file with the Clerk of the Commission and are hereby incorporated into this Motion by reference and adopted.

Motion No. 18272
Hearing Date: February 10, 2011

CASE NO. 2008.0021EPMTZW
Parkmerced Mixed-Use Development Program

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby APPROVES the Local Coastal Zone Permit No. 2008.0021EPMTZW in general conformance with the Application as received on January 10, 2011 and stamped "EXHIBIT A", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Local Coastal Zone Permit to the Board of Appeals within fifteen (15) days after the date of this Motion No. 18272. The effective date of this Motion shall be the date of this Motion if not appealed (after the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304) or call 575-6880.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 10, 2011.

AYES: Commissioners Antonini, Borden, Fong, and Miguel

NAYS: Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED: February 10, 2011



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18273

Development Agreement
HEARING DATE: FEBRUARY 10, 2011

Date: January 27, 2011
Project Name: Parkmerced Mixed-Use Development Program
W Case: Development Agreement
Case Number: 2008.0021EPMTZW
Initiated by: Seth Maller, Parkmerced Investors, LLC
3711 – 19th Avenue
San Francisco, CA 94132
Staff Contact: Elizabeth Watty, Planner
Elizabeth.Watty@sfgov.org, 415-558-6620
Reviewed By: David Alumbaugh, Acting Director Citywide Planning
David.Alumbaugh@sfgov.org, 415-558-6601
90-Day Deadline: N/A – Sponsor Initiated
Recommendation: Recommend Approval

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND PARKMERCED INVESTORS, LLC, A DELAWARE LIMITED LIABILITY CORPORATION, FOR CERTAIN REAL PROPERTY LOCATED AT 3711 19TH AVENUE IN THE LAKE MERCED DISTRICT IN THE SOUTHWEST CORNER OF SAN FRANCISCO AND GENERALLY BOUNDED BY VIDAL DRIVE, FONT BOULEVARD, PINTO AVENUE, AND SERRANCE DRIVE TO THE NORTH, 19TH AVENUE AND JUNIPERO SERRA BOULEVEARD TO THE EAST, BROTHERHOOD WAY TO THE SOUTH, AND LAKE MERCED BOULEVARD TO THE WEST, AND COMPRISED OF ASSESSOR'S BLOCKS AND LOTS 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001, ALTOGETHER CONSISTING OF APPROXIMATELY 152-ACRES AND COMMONLY KNOWN AS PARKMERCED, FOR A TERM OF THIRTY (30) YEARS AND MAKING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, GENERAL PLAN FINDINGS, AND FINDINGS PURSUANT TO PLANNING CODE SECTION 101.1(b).

The Planning Commission (hereinafter "Commission") finds as follows:

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EXHIBIT A

1. California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.
2. Chapter 56 of the San Francisco Administrative Code sets forth the procedure by which any request for a development agreement will be processed and approved in the City and County of San Francisco.
3. Parkmerced Investors, LLC ("Developer") owns the real property located in the City and County of San Francisco, California located at 3711 19th Avenue on Assessor's Blocks and Lots 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001, altogether consisting of approximately 152 acres and commonly known as Parkmerced (the "Project Site").
4. The Developer filed an Application with the City's Department of Planning for approval of a development agreement under Administrative Code Chapter 56. The Developer also filed applications with the Department of Planning to (a) amend the City's Planning Code to create the Parkmerced Special Use District, (b) amend the City's General Plan to change applicable height and bulk classifications, (c) amend applicable zoning maps.
5. The Developer proposes to increase residential density, provide a neighborhood core with new commercial and retail services, reconfigure the street network and public realm, improve and enhance the open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities within the Project Site. The Developer proposes to retain approximately half (1,683) of the existing 3,221 rent-controlled apartments as part of the Project. The remaining half would be demolished over time and replaced with the Replacement Units. Approximately 5,679 net new residential units would be added to the Project Site over time. In total, upon completion of the Project, there will be up to 8,900 residential units on the Project Site (1,683 existing-to-be-retained units + 1,538 newly constructed Replacement Units + 5,679 newly constructed units = 8,900 units). The Project Site would also be developed with a mixed-use residential and commercial development with accessory parking and loading. The Parties wish to ensure appropriate development of the Project Site, to provide for the replacement of the 1,538 rent-controlled units and tenant amenities in the residential structures currently existing on the Project Site and proposed to be demolished, and to protect the tenants of the existing residential structures from displacement due to the proposed development of the Project Site. The Parties acknowledge that this Agreement is entered into in consideration of the respective burdens and benefits of the Parties contained in this Agreement.

6. The Office of Economic and Workforce Development ("OEWD"), in consultation with the Planning Director, has substantially negotiated a development agreement for the Project Site, a copy of which is attached as Exhibit A (the "Development Agreement").
7. While the attached Development Agreement is substantially complete, there are items that OEWD staff and the Developer are still negotiating, which items are highlighted in a separate OEWD memorandum to the Commission. The Development Agreement must also be reviewed and approved separately by the Board of the San Francisco Municipal Transportation Agency, the San Francisco Public Utilities Commission and ultimately the San Francisco Board of Supervisors. These two City commissions and the Board of Supervisors may propose or recommend additional changes to the Development Agreement subsequent to this Commission reviewing and approving the attached Development Agreement.
8. The Planning Department analyzed the Project (Case No. 2008.0021EPMITZW), including the Development Agreement and other actions related to the Project, in a draft Environmental Impact Report published on May 12, 2010. On February 10, 2011, by Motion No. 18629, the Commission made findings and certified the Final Environmental Impact Report ("FEIR") in compliance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq., ("CEQA"), the State CEQA Guidelines (California Code of Regulations Title 14 Sections 15000 et seq.) and Chapter 31 of the San Francisco Administrative Code (Chapter 31).
9. Also on February 10, 2011, the Commission reviewed and considered the information contained in the FEIR and by Motion No. 18270 adopted CEQA Findings for the proposed Parkmerced Mixed-Use Development Program Project under CEQA, the CEQA Guidelines and Chapter 31, including the adoption of a mitigation monitoring and reporting program (MMRP) and a statement of overriding considerations, ("CEQA Findings"). The CEQA Findings, including the MMRP, for the proposed Project are on file with the Clerk of the Commission and are hereby incorporated into this Motion by reference as though fully set forth and are hereby adopted by the Commission in support of this action.
10. The Commission hereby finds, for the reasons set for in Motion No.'s 18270 and 18272, and Resolution No.'s 18271 and 18273, that the Development Agreement and related approval actions are, on balance, consistent with the General Plan including any area plans, and are consistent with the Planning Code Priority Policies of Planning Code Section 101.1(b).
11. The Director accepted the application for filing after it was deemed complete; published notice of acceptance in an official newspaper; and has made the application publicly available under Administrative Code Section 56.4(c).
12. OEWD has prepared an estimated budget of the reasonable costs to be incurred by the City in preparing and adopting the proposed Development Agreement and preparing related documents and that document is available for review by the Commission under Administrative Code Section 56.20. A copy of the estimated budget of the City's costs

associated with this matter recommended is attached as Exhibit B. The Developer is required to pay to the City all of the City's costs in preparing and negotiating the Development Agreement, including all staff time for all City Department's involved in the preparation of the Development Agreement and associated Planning Code and General Plan amendments.

13. The Director has scheduled and the Commission has held a public hearing as required by Administrative Code Section 56.4(c). The Planning Department gave notice as required by Planning Code Section 306.3 and mailed such notice on January 21, 2011, which is at least 10 days before the hearing to local public agencies as required by Administrative Code Section 56.8(b).
14. The Planning Department file on this matter was available for public review at least 20 days before the first public hearing on the development agreement as required by Administrative Code Section 56.10(b). The file continues to be available for review at the Planning Department at 1650 Mission Street, 4th floor, San Francisco.

IT IS HEREBY RESOLVED, that the Commission approves the Development Agreement, in substantially the form attached hereto as Exhibit A; and, be it

FURTHER RESOLVED, that the Commission approves the estimated budget of the City's costs associated with this matter recommended by the Director in Exhibit B; and, be it

FURTHER RESOLVED, that the Commission finds that the application, public notice, Planning Commission hearing, and Planning Director reporting requirements regarding the Development Agreement negotiations contained in Administrative Code Chapter 56 required of the Planning Commission and the Planning Director have been substantially satisfied in light of the over 250 public meetings held for the project and the five public informational hearings provided by Planning Department staff at the Planning Commission and the information contained in the Director's Report Regarding Parkmerced Development Agreement Negotiations; and, be it

FURTHER RESOLVED, that the Commission authorizes the Planning Director to take such actions and make such changes as deemed necessary and appropriate to implement this Commission's recommendation of approval and to incorporate recommendations or changes from the SFMTA Board, the SFPUC and/or the Board of Supervisors, provided that such changes do not materially increase any obligations of the City or materially decrease any benefits to the City contained in the Development Agreement attached as Exhibit A; and be it

FURTHER RESOLVED, that on or before the date the Development Agreement becomes effective, and pursuant to Administrative Code Section 56.20(b), the Developer shall pay the City an amount equal to all of the City's costs in preparing and negotiating the Development Agreement, including all staff time for the Planning Department and the City Attorneys' Office, as invoiced by the Planning Director.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on February 10, 2011.

RESOLUTION NO. 18273
Hearing Date. February 10, 2011

CASE NO. 2008.0021EPMTZW
Parkmerced Mixed-Use Development Program

Commission Secretary

AYES: Commissioners Antorini, Borden, Fong, and Miguel

NAYS: Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED: February 10, 2011



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 18270

CEQA Findings

HEARING DATE: FEBRUARY 10, 2011

Date: January 27, 2011
Project Name: Parkmerced Mixed-Use Development Program
Case Number: 2008.0021EPMITZW
Initiated by: Seth Mallen, Parkmerced Investors, LLC
3711 - 19th Avenue
San Francisco, CA 94132
Staff Contact: Elizabeth Watty, Planner
Elizabeth.Watty@sfgov.org, 415-558-6620
Reviewed By: David Alumbaugh, Acting Director Citywide Planning
David.Alumbaugh@sfgov.org, 415-558-6601
Recommendation: Adopt CEQA Findings

1600 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

ADOPTING PROJECT APPROVAL FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) TO ALLOW THE FULL IMPLEMENTATION OF THE PARKMERCED MIXED-USE DEVELOPMENT PROGRAM ("PROJECT"), BEING ALL OF ASSESSOR'S BLOCKS 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001, IN THE RM-1 (RESIDENTIAL MIXED, LOW DENSITY), RM-4 (RESIDENTIAL MIXED, HIGH DENSITY), & RH-1(D) (RESIDENTIAL HOUSE, ONE-FAMILY, DETACHED) DISTRICTS.

PREAMBLE

In determining to approve the Parkmerced Project ("Project") described in Section A, Project Description below, the San Francisco Planning Commission (hereinafter "Commission") makes and adopts the following findings of fact and decisions regarding mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act ("CEQA"), California Public Resources Code Sections 21000 et seq., particularly Sections 21081 and 21081.5, the Guidelines for Implementation of CEQA ("CEQA Guidelines"), 14 California Code of Regulations Sections 15000 et seq., particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administration Code.

FINDINGS

The San Francisco Planning Commission hereby incorporates by reference as though fully set forth herein the findings for the Project approval of the Parkmerced Mixed-Use Development Program (hereinafter the "Project") attached hereto as Exhibit A pursuant to the California Environmental Quality Act, California Public Resources Code, Sections 21000 et seq. ("CEQA"), the Guidelines for Implementation of CEQA, Title 15 California Code of Regulations Sections 15000 et seq. ("Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"), entitled Environmental Quality:

A. Project Description

The Parkmerced Mixed-Use Development Program is a long-term (20-30 year) mixed-use development program to comprehensively replan and redevelop the Parkmerced Project Site—the "Project" identified in the Final EIR. The Project would increase residential density, provide a neighborhood core with new commercial and retail services, modify transit facilities, and improve utilities within the development site. A new site for a Pre-K-5 school and/or day care facility, a fitness center, and new open space uses, including athletic playing fields, walking and biking paths, an approximately 2-acre farm, and community gardens, would also be provided. About 1,683 of the existing apartments located in 11 tower buildings would be retained. Over an approximately 20-year period of phased construction, the remaining 1,538 existing apartments would be demolished in phases and fully replaced, and an additional 5,679 net new units would be added to the Project Site, resulting at full build-out in a total of about 8,900 units on the Project Site.

The Project includes construction of (or provides financing for construction of) a series of transportation improvements, which include rerouting the existing Muni Metro M Ocean View line from its current alignment along 19th Avenue. The new alignment, as currently envisioned and analyzed in the Final EIR, would leave 19th Avenue at Holloway Avenue and proceed through the neighborhood core in Parkmerced. The Muni M line trains would then travel alternately along one of two alignments: trains either would re-enter 19th Avenue south of Felix Avenue and terminate at the existing Balboa Park station, or they would terminate at a new station, with full layover and terminal facilities, constructed on the Project Site at the intersection of Font Boulevard and Chumasero Drive.

The Proposed Project also includes a series of infrastructure improvements, including the installation of a combination of renewable energy sources, such as wind turbines and photovoltaic cells, to meet a portion of the Proposed Project's energy demand. In addition, stormwater runoff from buildings and streets would be captured and filtered through a series of bioswales, ponds, and other natural filtration systems. The filtered stormwater would then either percolate into the groundwater that feeds the Upper Westside groundwater basin and Lake Merced or be released directly into Lake Merced.

Amendments to the San Francisco Planning Code and the San Francisco General Plan are also proposed as part of the Proposed Project. The Planning Code amendments would change the Height and Bulk District Zoning Map and would add a Special Use District (SUD) applicable to

the entire Project Site, which would include an overlay of density and uses within the SUD. A Development Agreement is also proposed as part of the Project, as well as adoption of the *Parkmerced Design Standards and Guidelines*, which contain specific development guidelines.

The Final EIR also evaluated a Project sub-variant, which would construct a right-turn ingress along 19th Avenue between Crespi Drive and Junipero Serra Boulevard at Cambon Drive. This new access location would provide ingress for southbound vehicles only and would not provide access out onto 19th Avenue.

B. Planning and Environmental Review Process

The Project Sponsor applied for environmental review on January 8, 2008. The Department determined that an Environmental Impact Report was required and provided public notice of the preparation of such on May 20, 2009, and held a public scoping meeting on June 8, 2009. The Department published a Draft Environmental Impact Report (DEIR) on May 12, 2010. The Commission held a public hearing to solicit testimony on the DEIR on June 17, 2010. The Department received written comments on the DEIR for 61-days, beginning on May 12, 2010. The Department published the Comments and Responses on October 28, 2010. The DEIR, together with the Comments and Responses document, constitute the Final Environmental Impact Report (FEIR) for the Parkmerced Mixed-Use Development Program. The Commission certified the FEIR on February 10, 2011, in Motion No. 18629.

Pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, (CEQA), Title 14 California Code of Regulations Section 15000 *et seq.* (CEQA Guidelines), and Chapter 31 of the San Francisco Administrative Code, the Planning Commission has reviewed and considered the FEIR, which is available for public review at the Planning Department's offices at 1650 Mission Street.

Pursuant to CEQA Guidelines Section 15162, the Commission finds that the proposed actions before this Commission are within the scope of the project analyzed in the FEIR and (1) that no substantial changes are proposed in the Project and no substantial changes have occurred with respect to the circumstances under which this Project will be undertaken that would require major revisions to the FEIR due to the involvement of any new significant environmental effects or a substantial increase in the severity of previously identified effects and (2) no new information that was not known and could not have been known shows that the project will have any new significant effects not analyzed in the FEIR or a substantial increase in the severity of any effect analyzed or that new mitigation measures should be included that have not. The Commission further finds that an addendum to the FEIR is not required due to any changes in the Project or the Project's circumstances.

The public hearing transcript, a copy of all letters regarding the FEIR received during the public review period, the administrative record, and background documentation for the FEIR are located at the Planning Department, 1650 Mission Street, San Francisco. The Planning Commission Secretary, Linda Avery, is the custodian of records for the Planning Department and the Planning Commission.

Motion No. 18270
Hearing Date: February 10, 2011

CASE NO. 2008.0021EPMTZW
Parkmerced Mixed-Use Development Program

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby adopts the CEQA Findings attached hereto as Exhibit A and the Mitigation Monitoring and Reporting Program (MMRP) attached hereto as Exhibit B, which are incorporated herein by reference as though fully set forth.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on Thursday, February 10, 2011.

Commissioner Secretary

AYES: Commissioners Antonini, Borden, Fong, and Miguel

NAYS: Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED: February 10, 2011



ATTACHMENT A

PARKMERCED PROJECT CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS: FINDINGS OF FACT, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, AND STATEMENT OF OVERRIDING CONSIDERATIONS SAN FRANCISCO PLANNING COMMISSION (Revised: February 3, 2011)

In determining to approve the Parkmerced Project ("Project") described in Section I, Project Description below, the San Francisco Planning Commission makes and adopts the following findings of fact and decisions regarding mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act ("CEQA"), California Public Resources Code Sections 21000 et seq., particularly Sections 21081 and 21081.5, the Guidelines for Implementation of CEQA ("CEQA Guidelines"), 14 California Code of Regulations Sections 15000 et seq., particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administration Code:

This document is organized as follows:

Section I provides a description of the Project proposed for adoption, and, in the alternative, the No Muni Realignment Alternative, the environmental review process for the Project, the approval actions to be taken and the location of records;

Section II identifies the impacts found not to be significant that do not require mitigation;

Section III identifies potentially significant impacts that can be avoided or reduced to less-than-significant levels through mitigation and describes the disposition of the mitigation measures;

Section IV identifies significant impacts that cannot be avoided or reduced to less-than-significant levels and describes any applicable mitigation measures as well as the disposition of the mitigation measures;

Section V identifies mitigation measures proposed but rejected as infeasible for economic, legal, social, technological, or other considerations;

Section VI evaluates the different Project alternatives and the economic, legal, social, technological, and other considerations that support approval of the Project and the rejection of the alternatives, or elements thereof, analyzed; and

Section VII presents a statement of overriding considerations setting forth specific reasons in support of the Commission's actions and its rejection of the alternatives not incorporated into the Project.



EXHIBIT I:
MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PARKMERCED PROJECT
(Includes Text for Adopted Mitigation and Improvement Measures)

EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PARKMERCED PROJECT (Includes Text for Adopted Mitigation and Improvement Measures)				
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/Report Responsibility	Status/Date Completed
MITIGATION MEASURES FOR THE PARKMERCED PROJECT				
<i>Cultural Resources and Archaeological/Paleontological Resources Mitigation Measures</i>				
Mitigation Measure M-CR-1: Documentation and Interpretation	Project sponsor to retain qualified professional consultant	Prior to construction submittal of HABS/HAER/HALS guidelines documentation for approval by Planning Department.	Consultant to submit report to Planning Department	
<u>Documentation</u> The Project Sponsor shall retain a professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History to prepare written and photographic documentation of the Parkmerced complex within the Project Site. The documentation for the property shall be prepared based on the National Park Service's (NPS) Historic American Building Survey (HABS) / Historic American Engineering Record (HAER) Historical Report Guidelines, and will include a selection of measured drawings based upon NPS Historic American Landscape Survey (HALS) Guidelines. This type of documentation is based on a combination of both HABS/HAER standards (Levels I, II and III) and NPS's policy for photographic documentation as outlined in the National Register of Historic Places and National Historic Landmarks Survey Photo Policy Expansion. The measured drawings for this documentation shall follow RALS Level I standards. To determine the number of the measured drawings, the professional shall consult with the San Francisco Planning Department's Preservation Coordinator. The written historical data for this documentation shall follow HABS /HAER Level I standards. The written data shall be accompanied by a sketch plan of the property. Efforts should also be made to locate original construction drawings or plans of the property during the period of significance. If located, these drawings should be photographed, reproduced, and included in the dataset. If construction drawings or plans cannot be located, as-built drawings shall be produced. Either HABS/HAER standard large format or digital photography shall be used. If digital photography is used, the ink and paper combinations for printing photographs must be in compliance with NR-NHL Photo Policy Expansion and have a permanence rating of approximately 115 years. Digital photographs will be taken as uncompressed, TIFF file format. The size of each image will be 1600x1200 pixels at 330 ppi (pixels per inch) or larger, color format, and printed in black and white. The file name for each electronic image shall correspond with the index of photographs and photograph label. Photograph views for the dataset shall include (a) contextual views; (b) views of each side of each building and interior views, where possible; (c) oblique views of buildings; and (d) detail views of character-defining features, including features on the interiors of some buildings. All views shall be referenced on a photographic key. This				



DRAFT 5/20/2011

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARKMERCED INVESTORS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE PARKMERCED DEVELOPMENT PROJECT



parkmerced

infrastructure report

01.26.11

DRAFT



Merced

09.26.11



parkmerced

vision plan

10.14.10



parkmerced

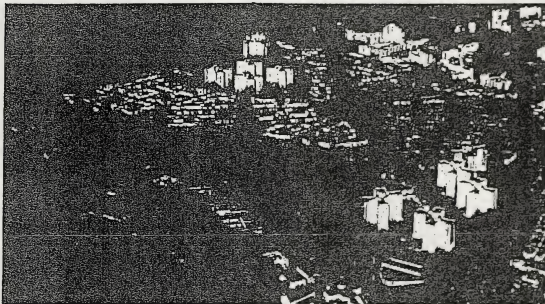
transportation plan

10.07.10



PARKMERCED PROJECT

Volume 1 - Chapters I-VIII



CITY AND COUNTY OF SAN FRANCISCO
PLANNING DEPARTMENT: CASE NO. 2008.0021E

STATE CLEARINGHOUSE NO. 2009052073

DRAFT EIR PUBLICATION DATE: MAY 12, 2010

DRAFT EIR PUBLIC HEARING DATE: JUNE 17, 2010

DRAFT EIR PUBLIC COMMENT PERIOD: MAY 12, 2010 TO JUNE 28, 2010

Written comments should be sent to:

Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

BY AK

2010 MAY 12 PM 5:04

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BOARD OF SUPERVISORS
SAN FRANCISCO

6/5



PARKMERCED PROJECT

Volume 2 - Appendices



CITY AND COUNTY OF SAN FRANCISCO
PLANNING DEPARTMENT: CASE NO. 2008.0021E

STATE CLEARINGHOUSE NO. 2009052073

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1650 Mission Street, Suite 400
San Francisco, CA 94103

BY AK

2010 MAY 12 PM 5:02

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Exhibit 3

SECTION	PROPOSED ADDITION OR REVISION TO PARKMERCED DEVELOPMENT AGREEMENT:
Add new text to end of § 3.4.1:	<p><i>(a) Require first Replacement Units be built on identified vacant land;</i> <i>(b) Require that existing blocks of tenants be kept together; and (c) Provide certain existing garden units not be demolished until the end of the Project and allow certain long-term tenants, facing a relocation, to elect to move into such garden apartments upon a vacancy.</i></p> <p>(a) <u>First Development Sites</u>. The Parties acknowledge that the construction of Replacement Units before the demolition of any Existing Units is a key requirement of this Agreement and is intended to ensure that the Existing Tenants are protected from displacement. Therefore, notwithstanding anything to the contrary above, no demolition shall occur and no other buildings shall be constructed on the Project Site until Replacement Units have been Completed on one of the three sites identified on <u>Exhibit V</u>.</p> <p>(b) <u>Phasing of Tenant Relocation</u>. The Parties also understand that the Existing Tenants may have strong social and community bonds with each other, and the Parties seek to respect and maintain those social and community bonds. Accordingly, Relocating Tenants residing within the same existing numerically-identified blocks as shown in <u>Exhibit W</u> shall have the right in connection with the exercise of their relocation options pursuant to <u>Article 4</u> to elect to be collectively moved to Replacement Units within the same new block (subject to the rights of Existing Tenants to move on an interim basis and the rights of individual Relocating Tenants as described in <u>Article 4</u>) such that Relocating Tenants will remain neighbors within the same block notwithstanding their relocation. For the purposes of this Agreement, blocks 37W and 37E shall be considered separate blocks.</p> <p>(c) <u>Interim Replacement Units: Long-Term Resident Protection</u>. In order to provide Replacement Units with the same style and quality of life as the existing garden apartments, the City shall not approve a Development Phase Application that would result in demolition of the apartment buildings located on the three (3) existing blocks identified on <u>Exhibit X</u> (the "Interim Replacement Units") until the earlier of (i) the date upon which development of all other residential parcels have been Completed or (ii) twenty (20) years from the Effective Date of the Agreement. The Interim Replacement Units shall be offered to Existing Tenants that have occupied an Existing Unit for more than ten (10) years (a "Long-Term Existing Tenant") as of the Effective Date. Within sixty (60) days of the Effective Date of this Agreement, Developer shall deliver written notice to all Long-Term Existing Tenants (the "Long-Term Existing Tenant Notice"). The Long-Term Existing Tenant Notice shall request that the Long-Term Existing Tenant complete and return an attached response form that notifies Developer of the Long-Term Existing Tenant's interest in relocating to an Interim Replacement Unit, as an alternative to being relocated to a Replacement Unit before the</p>

	<p>Building Vacancy Date for their existing building. The purpose of such response form is solely to provide information to Developer in order to plan for and facilitate the future relocation process to an Interim Replacement Unit. Existing Tenant's response indicating interest in accepting or rejecting an Interim Replacement Unit shall be non-binding and delivery or lack of delivery of such response form shall have no legal effect on an Existing Tenant's ability to later request an Interim Replacement Unit or a Replacement Unit in accordance with this Agreement. Long Term Existing Tenants shall have the additional option to request relocation to an Interim Replacement Unit anytime after receipt of an Existing Tenant Notice and before receipt of the Relocation Notice. Upon request to relocate to an Interim Replacement Unit, Developer shall move such Long-Term Existing Tenant to a vacant Interim Replacement Unit and Developer shall be responsible for all Relocation Costs for consistent with <u>Section 4.4.8(a)</u>. Long Term Existing Tenants will be allowed to stay in the Interim Replacement Unit until such time as the Interim Replacement Units receive a Relocation Notice or, if the Long Term Existing Tenant rejects a Replacement Unit, until the applicable Building Vacancy Date, consistent with <u>Article 4</u>.</p>
<p>Amend § 3.10.2:</p>	<p><i>Require Developer to enter into a lease addendum with each Existing Tenant at the time of relocation into a Replacement Unit (and include this addendum in all future leases of the Replacement Units) to incorporate the tenant protections of the DA, including rent control on the Replacement Unit and the Existing Tenant's right to a lifetime lease subject to the provisions of Rent Ordinance.</i></p> <p>Notwithstanding anything to the contrary set forth above, in any subdivision or condominium map placed on the Project Site, the Replacement Units shall not be subdivided into separate condominium units so as to ensure that the Replacement Units remain rental units, under common ownership for each such building, for the life of each such building in which a Replacement Unit is located. Developer shall record restrictions running with the land, in form and substance satisfactory to the Planning Director and the City Attorney (the "Recorded Restrictions"), binding upon Developer and successor owners of all or part of the Replacement Units, that shall, without limitation: (i) require that the Replacement Units remain rental for the life of the buildings in which they are located, <u>and require that the language set forth in Exhibit Y be included in all leases for each Replacement Unit</u>; (ii) waive any and all rights to evict tenants under the Ellis Act and any other laws or regulations that permit owner move-in evictions; (iii) apply the terms of Rent Ordinance to the Replacement Units, and acknowledge the non-applicability of the Costa-Hawkins Act, <u>and provide the City and each tenant in a Replacement Unit the express right to enforce these provisions and collect attorneys fees and costs in any enforcement action, and expressly include the remedies set forth in Sections 12.8 and 12.9 of this Agreement if rent control under the Rent Ordinance is deemed not to apply to the Replacement Units for any reason</u>; and (iv) waive any other laws or regulations that would limit the ability of the City or <u>any tenant</u> to enforce the rental-only requirements and the other benefits and amenities relative to the Replacement Units under this</p>

	<p>Agreement. Developer, on behalf of itself and successor owners, agrees that it shall not seek to challenge the applicability or enforceability of the Recorded Restrictions. Without limiting the City's rights and remedies as set forth in this Agreement, the Parties acknowledge and agree that the City shall have the right of specific performance to enforce the Recorded Restrictions against Developer and all successor owners. The City would not be willing to enter into this Agreement, permit the demolition of Existing Units, or approve a subdivision or condominium map, without the agreement and understanding as set forth above.</p>
<p>Delete § 4.3.1(c):</p>	<p><i>Permit Existing Tenants to petition the Rent Board for a reduction in service due to the loss of a patio or balcony by deleting the following language in the DA.</i></p> <p>(c) While some of the Existing Units have patios or balconies, the Replacement Units may or may not have patios or balconies. The City agrees that, because of the improvement in the size and quality of the open space proposed by the Project compared to the existing open space at the Project Site, and due to the Project's provision of amenities in the Replacement Units that are not present in the existing units (such as a washing machine, dryer, and dishwasher), the lack of a patio or balcony in a Replacement Unit shall not violate the Rent Ordinance.</p>
<p>Amend § 4.3.3:</p>	<p><i>Conforming change; same lease addendum language as above (requiring the addendum for all future leases of the Replacement Units).</i></p> <p><u>Right of Existing Tenants to Relocate to Replacement Units.</u> Each Existing Tenant shall have the right to relocate from an Existing Unit to a Replacement Unit in accordance with terms of this <u>Article 4</u>; <i>provided, however</i>, that if more than one person occupies an Existing Unit, the persons occupying the Existing Unit shall collectively be entitled to relocate to only one (1) Replacement Unit as further described in <u>Section 4.4.3</u>. Developer shall lease to each Existing Tenant who elects to and does relocate to a Replacement Unit in accordance with the terms of this <u>Section 4.3</u> (each, a "Relocating Tenant") a Replacement Unit under the same terms and provisions as the Relocating Tenant's existing lease; <i>provided, however</i>, that (i) the date of initial occupancy shall continue to be the date of the existing lease for all purposes except for calculating future rent increases, as set forth in <u>Section 4.3.6</u> below, (ii) such existing lease shall be amended to reflect the changed location of the leased premises (and the changed location of any parking space, if applicable), and (iii) <u>such existing lease shall be amended to add the language set forth in Exhibit Y, which language shall also be included in all future leases for each Replacement Unit and (iv) no other amendments to the lease shall be made (including but not limited to any provision regarding the permissibility of pets).</u></p>
<p>Add text to end of</p>	<p><i>Conforming change; require existing blocks of tenants to remain together upon relocation.</i></p>

§4.4.1(a):	Each Tenant Relocation Plan shall ensure that Relocating Tenants within an existing block (as shown in <u>Exhibit W</u>) shall be provided the opportunity to move to Replacement Units located on the same block, so that the Relocating Tenants can remain neighbors of the same block despite their relocation.
Amend § 4.4.5(a):	<p><i>Add time(from 20 days to not less than 45 days) for Existing Tenants to select a Replacement Unit.</i></p> <p>Each Existing Tenant desiring to exercise his or her right to relocate to a Replacement Unit must, within <u>the latter of (i) twenty (20) days following the last of the three dates provided in the Replacement Unit Availability Notice for the Existing Tenant's visit of the model Replacement Unit or (ii) forty-five (45) days from receipt of the Replacement Unit Availability Notice (collectively, the "Selection Period")</u>, deliver written notice to Developer of (i) his or her decision to relocate or not to relocate to a Replacement Building, and (ii) for Existing Tenants choosing to relocate, their selection of all available Replacement Units (of the unit type for which they qualify), ranked in the order of preference in accordance with the Tenant Relocation Plan (the "Replacement Unit Preference Notice"). Delivery of the Replacement Unit Preference Notice to Developer shall determine which Existing Tenants become Relocating Tenants and which remain Existing Tenants qualifying for Relocation Payment Benefits under this Agreement.</p>
Replace §4.4.8(a):	<p><i>Provide for either Developer payment of all costs of relocation, including packing costs, using one or more bonded and licensed moving companies, or allow Existing Tenants to arrange for its own move and be paid a moving allowance equal to amounts payable under State Relocation Law.</i></p> <p>(a) <u>Relocation Obligations.</u> Developer shall be responsible at Developer's cost for moving the possessions of each Relocating Tenant (including the packing and unpacking of such possessions) from the Relocating Tenant's Existing Unit to the applicable Replacement Unit ("Developer's Move"). Developer shall contract with one or more licensed and bonded moving companies, and shall pay all costs and fees to such moving companies. Alternatively, each Relocating Tenant shall have the right to a dislocation allowance, as set forth in Government Code section 7262(b), equal to the Residential Moving Expense and Dislocation Allowance Payment Schedule established by Part 24 of Title 49 of the Code of Federal Regulation ("Dislocation Allowance"). Developer shall, upon request, inform Relocating Tenants of the Dislocation Allowance amount. If the Relocating Tenant consists of more than one person and such persons are not able to collectively agree on whether to select the Developer's Move or the Dislocation Allowance, then the person with the highest seniority shall make the selection. For Existing Tenants that choose the Dislocation Allowance, then Developer shall pay the Dislocation Allowance directly to the Existing Tenant within thirty (30) days following such selection, and the Existing Tenant shall then be responsible for completing the move to the Replacement Unit at its sole cost.</p>

<p>Add new § 4.6:</p>	<p><i>Allow tenants to petition for a rent reduction based upon construction impacts. Also, if significantly adversely affected by construction, then provide for relocation payments under Rent Ordinance to allow tenant to move off site or for Developer to move the tenant to other areas of the Project Site at Developer's cost.</i></p> <p>4.6 <u>Construction Noise and Disruption.</u></p> <p>4.6.1 <u>Rent Abatement.</u> Any tenant legally occupying a residential unit at the Project Site shall have the right to petition the Rent Board for a finding of a reduction in service as a result of adverse construction impacts in accordance with the Rent Ordinance. Any such petition shall be determined in accordance with the standard practices and procedures of the Rent Board applied on a Citywide basis pursuant to the Rent Ordinance.</p> <p>4.6.2 <u>Additional Remedies.</u> The Rent Board has advised the Parties that the Rent Ordinance does not permit remedies other than rent abatement if a tenant experiences adverse construction impacts. The Parties acknowledge that rent abatement may be an insufficient remedy in the event that construction creates significant adverse impacts to tenants. For the purposes of this Agreement, "significant adverse construction impacts" shall mean construction noise or disruption that a resident of the City would not reasonably expect to experience in an urban environment. Accordingly, persons legally occupying an Existing Unit on the Effective Date may, if significantly and adversely impacted by construction from the Project, may request either (i) Relocation Payment Benefits or (ii) relocation to an equivalent unit on the Project Site. To receive these remedies, (i) the persons must demonstrate by substantial evidence to Developer or the Rent Board that they are suffering significant adverse impacts from construction exposure that merit the right to vacate the Existing Unit, and (ii) all of the persons legally occupying the Existing Unit must be willing to vacate the Existing Unit (the "Impact Findings").</p> <p><u>Relocation Payment Benefits.</u> If the persons occupying the Existing Unit requested Relocation Payment Benefits and Developer or the Rent Board makes the Impact Findings, then such persons shall vacate the Existing Unit within ninety (90) days and upon such vacation Developer shall pay to such persons the Relocation Payment Benefits (less any rent due and owing from such persons). Any persons who subsequently occupy an Existing Unit vacated under this Section 4.6.2 shall be deemed a New Tenant, and shall not have the right to a Replacement Unit or the right to Relocation Payment Benefits so long as Developer includes in each written lease the No Relocation Benefits Statement.</p> <p><u>Relocation to an Equivalent Unit.</u> If the persons occupying the Existing Unit request relocation on the Project Site and the Rent Board or Developer makes the Impact Findings, then such persons shall have the right to select an equivalent residential unit on the Project Site (either a Tower Unit or an Alternate Existing Unit) from those identified by Developer as vacant. The persons shall have the right to occupy the equivalent residential unit under the same terms of their</p>
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	<p>existing lease, subject to the Rent Ordinance and the lease revisions set forth in <u>Section 4.3.3</u>. Such persons shall be moved to the selected residential unit at Developer's cost. For purposes of this <u>Section 4.6.2</u>, an "equivalent residential unit" shall mean a residential unit on the Project Site with the same number of bedrooms and bathrooms as the Existing Tenant's Existing Unit and acceptable to the Existing Tenant in its sole discretion. An Existing Tenant may, but shall not be required to, accept a smaller or larger residential unit subject to such adjustments in rent as may be agreed upon by the Existing Tenant and Developer.</p> <p>(a) If an Existing Tenant elects to move into a Tower Unit under this <u>Section 4.6.2</u>, then such Existing Tenant will have the right to stay in the Tower Unit under their existing lease (with the lease revisions set forth in <u>Section 4.3.3</u>) and shall no longer qualify for the Relocation Payment Benefits or for a Replacement Unit under <u>Article 4</u>.</p> <p>(b) If an Existing Tenant elects to temporarily move into a different Existing Unit under this <u>Section 4.6.2</u> (an "Alternate Existing Unit"), then such Existing Tenant will have the right to relocate into a Replacement Unit in the same manner and the time frame, with the same notices, as if the Existing Tenant never left the Existing Unit but (i) the notices to such Existing Tenant shall be triggered by the date of demolition of the Alternate Existing Unit instead of the Existing Unit, and (ii) the Existing Tenant's date of initial occupancy shall not change but the Existing Tenant's seniority, for purposes of selecting a Replacement Unit, shall be determined in relation to the other Existing Tenants in the To-Be-Replaced Building in which the Alternate Existing Unit is located. No person shall have the right to more than two (2) temporary relocations under this <u>Section 4.6.2</u>. If the Existing Tenant moves to an Alternate Existing Unit and rejects or is deemed to reject the Replacement Unit as set forth in <u>Section 4.4.7</u>, then the Existing Tenant shall not become a Relocating Tenant but instead shall have the right to remain in the Alternate Existing Unit under the terms of their existing lease, subject to the Rent Ordinance, until the Building Vacancy Date, and shall (A) no longer qualify for a Replacement Unit, but (B) shall continue to qualify for Relocation Payment Benefits as an alternative to the Replacement Unit.</p>
Add new § 12.8 and 12.9:	<p><i>Provide express remedies for Developer's or future owner's failure to honor rent control provisions (a "Reneging Owner") or for a final judicial determination of unenforceability. For a Reneging Owner, City has immediate right to terminate DA and receive Rent Control Liquidation Amount plus maximum interest permitted under law. Rent Control Liquidation Amount is the net present value of the difference between the units with and without rent control plus 20%.</i></p> <p><i>For judicial determination before construction starts, City can terminate entire DA. For judicial determination after construction starts, the parties will meet and confer to maintain benefit of bargain and to protect tenants, and Developer/Owner cannot take any adverse action against tenants (including increase rents or evictions) until the matter is resolved or Developer/Owner pays the Rent Control Liquidation Amount. Developer/Owner must either voluntarily continue to apply rent control rents or pay the Rent Control</i></p>

Liquidation Amount for the life of the Replacement Unit. City (acting through MOH) will use payment to provide vouchers to affected tenants to cover the difference between rent control rent and rent charged by Developer/Owner. Tenants have separate rights of enforcement for all of rent control provisions. City has right of first refusal for all of the Replacement Units, for the benefit of City and its designee (i.e., Existing Tenants).

Rent Control Liquidation Amount will be determined using CBRE methodology (currently estimated at approximately \$160M). If the Parties fail to agree on the amount, then baseball arbitration.

12.8 Disputes Relating to the Rent Ordinance. As set forth in Article 4, the Parties would not have entered into this Agreement without rent control under the Rent Ordinance applying to all of the Replacement Units for the life of the Replacement Buildings. Accordingly, notwithstanding anything to the contrary above, the Parties agree to the following rights and remedies relative to the Rent Ordinance and the Replacement Units:

12.8.1 If, notwithstanding the clear intent of the Parties as set forth in this Agreement, Developer or its Affiliates sues or takes other action (against City or any tenant) to challenge the applicability of rent control under the Rent Ordinance to any of the Replacement Units (such Developer and its Affiliates shall be referred to collectively as a "Reneging Owner" and such action shall be referred to as a "Reneging Act"), then such Reneging Act shall be deemed an Event of Default, which may be cured within thirty (30) days of such Reneging Act if the Reneging Act was made by mistake or inadvertence. Without limiting City's other rights and remedies under this Agreement, each Reneging Owner shall pay the Rent Control Liquidation Amount immediately upon the taking of a Reneging Act, and such amount shall accrue interest at the highest rate permitted by law from the date of the Reneging Act to the date of payment. If a Reneging Owner fails to cure the Event of Default within 30 days (if applicable, as set forth above), the City shall have the immediate right to terminate this Agreement against the Reneging Owner and to take such additional actions and pursue such additional remedies as may be permitted by law or in equity, including but not limited to specific performance of the rent control requirements and limitations as set forth in Article 4. Affected tenants also have the right to pursue all rights and remedies against a Reneging Owner.

Notwithstanding anything in this Agreement to the contrary, upon the Reneging Act (or the Owner's failure to cure the Reneging Act as set forth above), the Planning Director shall have the right to send a notice of termination which will become effective and terminate this Agreement as to the Reneging Owner upon delivery. This termination right shall apply to the Reneging Owner only, and not to other Developers that continue to recognize and abide by the terms of this Agreement.

12.8.2 In addition, upon publication of a decision by a court of competent jurisdiction (after the Board adopts the Enacting Ordinance) relating to the application of rent control under a development agreement that, in the reasonable

opinion of the City Attorney, directly jeopardizes the enforceability of rent control as applied to the Replacement Units under this Agreement, the City shall have the right to issue a notice of suspension and immediately halt the issuance of demolition permits and tenant relocations, but shall not have the right to halt other development work at the Project Site (except against a Reneging Owner). Upon delivery by City of a notice of suspension, the Parties (not including a Reneging Owner) agree to meet and confer for a period of not less than sixty (60) days, as such period may be extended by mutual agreement or, if the matter has been submitted to a court, until the matter has been finally adjudicated beyond any and all appeal periods (the "Meet and Confer Period"). The term of this Agreement shall be extended on day to day basis for each day of the Meet and Confer Period. During the Meet and Confer Period the Parties will use good faith efforts to maintain the benefit of the bargain to both Parties and to protect all tenants. If the Parties are able to reach agreement on an acceptable approach to maintain the mutual benefit of the bargain and to protect tenants during the Meet and Confer Period, they shall memorialize such agreement in writing. Any such agreement that amends the terms of this Agreement shall be subject to the prior approval of the City's Board of Supervisors, acting by ordinance and in its sole discretion, as an amendment to this Agreement. Any such amendment shall be recorded against the applicable portions of the Project Site. The Parties may also agree to mediation during the Meet and Confer Period to assist with identifying solutions that maintain the benefit of the bargain for both Parties and to protect tenants. Either Party may seek judicial relief to determine their respective rights and obligations under this Agreement if the Parties fail to reach agreement during the Meet and Confer Period.

12.8.3 If the Parties are not able to reach agreement during the Meet and Confer Period or if the Board of Supervisors does not approve the proposed amendment to this Agreement, or if a court with jurisdiction reaches a final, binding, and non-appealable determination (meaning that the appeal period for a decision has expired without an appeal or the decision can no longer be appealed to a higher court) that rent control under the Rent Ordinance does not apply to the Replacement Units notwithstanding the clear language of this Agreement and the applicable leases (each, a "Rent Control Rejection"), then Developer shall still be required to build a Replacement Building before demolishing a To-Be-Replaced Building and to comply with all provisions of Article 4, including the Existing Tenant relocation and payment provisions (but excluding the rent control provisions that have been determined by a court to be unenforceable) for so long as this Agreement remains in effect, and:

(a) If the Rent Control Rejection occurs before commencement of substantial construction of any building or Community Improvement on the Project Site, then the City shall have the immediate right to terminate this Agreement in its entirety, without cost or liability, by written notice to Developer. Upon delivery of such notice to Developer and subject to a hearing by the Board of Supervisors to validate such termination, this Agreement will terminate and the City shall have

the right, acting alone, to record a notice of termination.

(b) If the Rent Control Rejection occurs at any time after commencement of substantial construction of any building or Community Improvement on the Project Site, then each Developer (other than a Reneging Owner) may prevent a termination of this Agreement by the City and have the right to proceed with its rights and obligations under this Agreement, including the right to demolish To-Be-Replaced Buildings, by performing all of its obligations under Article 4, including the construction, relocation, and payment provisions but excluding any rent control provisions that have been declared unenforceable, and either paying the Rent Control Liquidation Amount as set forth in subsection (c) below (the "Rent Control Liquidation Option") or (ii) voluntarily continue to perform and abide by all of the requirements of Article 4, including the application of rent control under the Rent Ordinance to the Replacement Units (the "Voluntary Rent Control Option") and thereby not pay the Rent Control Liquidation Amount for so long as it continues the Voluntary Rent Control Option for all of its Replacement Units; provided under either option Developer shall also be required to pay the Relocation Payments Benefit to any Existing Tenant that vacates its Replacement Unit as a result of a Rent Control Rejection within ninety (90) days following any increase in rent above that which would be permitted under the Rent Ordinance. Following a Rent Control Rejection, each Developer or owner of an existing Replacement Building shall notify the City in writing of its election to proceed under the Voluntary Rent Control Option or the Payment Option. Any election of the Voluntary Rent Control Option shall be (i) made in writing and in recordable form approved by the City and (ii) included in any Assignment and Assumption Agreement for the applicable portion of the Project Site. If a Developer chooses to proceed under the Voluntary Rent Control Option but then subsequently takes a Reneging Act at any time during the remaining life of the Replacement Unit, then that Developer shall be required to immediately pay the Rent Control Liquidation Amount to the City at that time, and such amount shall accrue interest at the highest rate permitted by law from the date of the Reneging Act to the date of payment.

(c) The Rent Control Liquidation Amount shall be equal to one-hundred and twenty percent (120%) of the net present value of the difference between (i) the amount of rent that the tenant would have paid for his or her Replacement Unit under the Rent Ordinance as required by the terms of this Agreement and (ii) the amount of rent the that tenant would be expected to pay for his or her Rent-Controlled Replacement Unit at the prevailing market rate of rent, using the same methodology (including the number of years used to calculate net present value) as was used by CBRE in its document entitled Parkmerced Pro Forma Review & Public Benefits Analysis dated January 1, 2011. Following a Rent Control Rejection, Developer shall, unless it agrees to the Voluntary Rent Control Option as set forth above, promptly provide to the City a detailed analysis, with backup documentation, of its determination of the Rent Control Liquidation Amount. The Parties will meet and confer for a period of not less than 30 days (as such period may be extended by mutual agreement) to reach agreement on the Rent

Control Liquidation Amount. If the Parties are not able to reach agreement on the Rent Control Liquidation Amount, then either Party shall have the right to initiate arbitration to determine the Rent Control Liquidation Amount in accordance with Section 12.9 below. With respect to a Reneging Owner, the Rent Control Liquidation Amount shall be determined by the court that adjudicates the dispute between the City and the Reneging Owner.

(d) By entering into this Agreement, and notwithstanding any subsequent Reneging Act, each Developer agrees that it will accept rent from all tenants in a Replacement Unit at the amounts permitted under the Rent Ordinance, and will not attempt to evict any tenant for failing to pay any higher amount, before payment of the Rent Control Liquidation Amount and, if the matter is being litigated, before the matter is finally adjudicated and upheld beyond any and all appeal periods.

(e) After negotiation, the Parties have agreed to the Rent Control Liquidation Amount as the damages that the City will suffer in the event that the Rent Ordinance does not apply to the Replacement Units, and such amount will be used by the City as set forth in subsection (f) below. The added twenty percent (20%) is designed to cover City's administrative and other costs in operating the tenant protection programs described in subsection (f) below. Developer further acknowledges and agrees that any collection of the Rent Control Liquidation Amount shall not (i) release or otherwise limit the liability of Developer for default or violation of this Agreement or limit any of City's other rights and remedies in this Agreement, (ii) release or otherwise limit the requirement of Developer to complete each Replacement Building before demolishing a To-Be-Replaced Building, or (iii) release or otherwise limit the requirement of Developer to relocate each Existing Tenant and/or pay the Relocation Benefits Payments as set forth in Article 4 or in subsection (b) above. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THAT IT HAS AGREED TO THE TERMS AND PROVISIONS OF THIS SECTION, INCLUDING THE METHODOLOGY FOR CALCULATING THE RENT CONTROL LIQUIDATION AMOUNT, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED PAYMENT PROVISION.

INITIALS: City _____ Developer _____

(f) City shall deposit all payments of the Rent Control Liquidation Amount into a Tenant Protection Fund to be administered by MOH (or any successor City agency). MOH shall use the funds in the Tenant Protection Fund to provide vouchers to tenants in Replacement Units to pay the difference between the rent that is charged for that Replacement Unit following a Reneging Act and the rent that would have been charged under the Rent Ordinance as applied to that Replacement Unit (the "Rent Assistance"). After four (4) years or more of Rent Assistance to a tenant, MOH shall have the right, but not the obligation, to

discontinue paying Rent Assistance to that tenant if its household income exceeds one-hundred and twenty (120%) of the area median income for San Francisco, as determined by MOH in accordance with its BMR program. MOH shall continue to pay the Rent Assistance from the Tenant Protection Fund for each tenant in a Replacement Unit for so long as that tenant remains in the Replacement Unit, subject to the right (but not obligation) to eliminate payments for tenants above one-hundred and twenty (120%) area median income as set forth above. Upon MOH's determination that sufficient funds are available to pay the Rent Assistance to tenants as provided above, MOH shall also have the right to use any excess funds in the Tenant Protection Fund to pay for a first time homebuyer program, to pay for additional housing vouchers, or to purchase increased affordability for existing BMR Units at the Project Site. In no event shall the City or Developer be liable for any payments above the amounts available in the Tenant Protection Fund.

(g) Following a Rent Control Rejection, and unless Developer has elected the Voluntary Rent Control Option for the benefit of the Relocating Tenants, City shall have a one-time right of first refusal (the "ROFR"), for itself or its designee (including Existing Tenants), to rent each Replacement Unit. Developer shall first offer the Replacement Unit to City at the same rent, and under the same conditions and terms, as Developer is willing to accept from a third party (collectively, the "Rental Terms"). The Rental Terms shall be contained in a written notice (the "First Refusal Notice") from Developer to City, which notice shall include a copy of the proposed lease. City or its designee shall have the right to lease one or more of the Replacement Units by providing to Developer a notice of acceptance within sixty (60) days following City's receipt of the First Refusal Notice, together with the leases as signed by the City or its designee. Notwithstanding anything to the contrary in the Rental Terms, Developer shall not have the right to impose or require a new security deposit on an Existing Tenant, and shall instead transfer any existing security deposit to the new lease. If City or its designee does not deliver an acceptance notice for a Replacement Unit with the signed lease within sixty (60) days, then Developer shall have the right to lease that Replacement Unit to a third party on the Rental Terms for a period of up to one-hundred and eighty (180) days. If Developer leases the Replacement Unit on the Rental Terms during this one-hundred and eighty (180) day period, then the City's ROFR for that Replacement Unit shall terminate. If the Replacement Unit is not leased within 180 days, or if Developer is willing to lower the rent or otherwise change the Rental Terms for a Replacement Unit, then City's ROFR shall continue and Developer shall provide to City a new First Refusal Notice specifying the new Rental Terms that that Developer is willing to accept. Once a Replacement Unit has been leased under the terms set forth above (to either City or its designee, or to a third party), then City's ROFR shall terminate and be of no further force or effect.

12.9 Arbitration for Rent Control Liquidation Amount.

12.9.1 Appointment. Each Party shall appoint one (1) appraiser within thirty (30) days after the notice that the arbitration provisions of this Section have been

invoked. Upon selecting its appraiser, each Party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. Each such MAI appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing multi-family real estate in the City and County of San Francisco. If either Party fails to appoint its appraiser within such thirty (30)-day period, the appraiser appointed by the other party shall individually determine the Rent Control Liquidation Amount in accordance with the provisions hereof.

12.9.2 Instruction and Completion. Each appraiser will make an independent determination of the Rent Control Liquidation Amount. Each appraiser will be provided with a copy of the CBRE analysis entitled Parkmerced Pro Forma Review & Public Benefits Analysis dated January 1, 2011, and shall use the same methodology as contained in such CBRE analysis to determine the Rent Control Liquidation Amount. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Rent Control Liquidation Amount. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Rent Control Liquidation Amount to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Rent Control Liquidation Amount is not more than one hundred ten percent (110%) of the lower appraised Rent Control Liquidation Amount, then the Rent Control Liquidation Amount shall be the average of such two (2) Rent Control Liquidation Amount figures.

12.9.3 Potential Third Appraiser. If the higher appraised Rent Control Liquidation Amount is more than one hundred ten percent (110%) of the lower appraised Rent Control Liquidation Amount, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties, in

accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser set forth above. The two appraisers shall inform the parties of their appointment at or before the end of such thirty (30)-day appointment period. Each Party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal. Either Party may, by written notice to the other Party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Agreement. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30)-day period (or within a reasonable period thereafter), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the Party first applies to the Court for appointment of the third appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

12.9.4 Baseball Appraisal. Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other Party and the appraiser such Party selected, at the same time it submits the same to the third appraiser. Neither Party, nor the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the Rent Control Liquidation Amount determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Rent Control Liquidation Amount. The determination of the third appraiser shall be limited solely to the issue of deciding which of the determinations of the two appraisers is closest to the actual Rent Control Liquidation Amount. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Agreement.

12.9.5 Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Rent Control Liquidation Amount by the accepted appraisal shall be conclusive, final and binding on the Parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Agreement and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Agreement. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

12.9.6 Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects. The fees, costs and expenses of the third appraiser shall be shared equally by City and Developer. If there is more than one Developer at the time the arbitration process begins, then the Developer with the most seniority under this Agreement (i.e., the Developer that is the first to enter into this Agreement with City) shall have the right to determine the Rent Control Liquidation Amount and to participate in the arbitration as set forth in this Section 12.9, and upon determination the Rent Control Liquidation Amount shall apply to all Developers at that time. The City shall not be required or permitted to charge different Rent Control Liquidation Amounts for different Developers; provided, if a Developer agrees to the Voluntary Rent Control Option but then subsequently takes a Reneging Act (by attempting to impose rents above the amount that would be permitted under the Rent Ordinance) at any time during the remaining life of the Replacement Unit, then that Developer shall be required to immediately pay the Rent Control Liquidation Amount, as determined at that time (and by arbitration at that time, if required).

Revise
§12.2:

Make clear that all persons occupying Existing Units are third party beneficiaries of the Agreement, and shall have the right to not only enforce the requirements of Article 4, but also the right to confirm the validity and enforceability of Article 4 at any time from and after the adoption of the Enacting Ordinance.

12.2 Private Right of Action. In addition to the options available to the City to enforce this Agreement, all persons occupying Existing Units shall have, immediately on the Effective Date, a private right of action against the Developer and any successor owner, but not against the City, to enforce the Replacement Unit requirements set forth in Article 4 of this Agreement, including but not limited to rent control provisions required under the Rent Ordinance thereunder, with attorneys' fees and costs awarded to the prevailing party in any enforcement action. The Parties recognize and agree that such persons shall be express third party beneficiaries of the requirements set forth in Article 4, with the right to enforce to the greatest extent under law and equity, and confirm the validity and enforceability of, the requirements in Article 4 at any time from and after adoption of the Enacting Ordinance.

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Exhibit 4

Board of Supervisors President David Chiu – Summary of Changes to Strengthen Rent Control
in Parkmerced Development Agreement

5/24/2011

SECTION	PROPOSED ADDITIONS OR REVISIONS TO PARKMERCED DEVELOPMENT AGREEMENT TO STRENGTHEN TENANT RIGHTS:
Add new text to end of § 3.4.1; Add text to end of §4.4.1(a)	<p>PHASING IMPROVEMENTS FOR THE TENANTS BENEFIT</p> <p>(a) “First Blocks” Provision. Require first Replacement Units be built on identified vacant land</p> <p>(b) “Preserve Existing Neighbors” Provision. Require that existing blocks of tenants be kept together; and</p> <p>(c) “Safe Harbor/Last Phase” Provision. Require that several pre-determined concrete-constructed existing garden unit blocks not be demolished until the end of the Project and allow certain long-term tenants (10-yr tenure or greater), facing a relocation, to elect to move into such garden apartments upon a vacancy.</p>
Amend § 3.10.2, & § 4.3.3	<p>NEW LEASE ADDENDUM PROVISION – CREATES CONTRACTUAL PRIVACY BETWEEN EACH DEVELOPER/OWNER AND ALL TENANTS OCCUPYING REPLACEMENT UNITS.</p> <p>Provides yet another line of defense if a bad actor attempts to invalidate rent control protections on any Replacement Unit. Requires each Owner/Developer to enter into a lease addendum with each Existing Tenant at the time of relocation into a Replacement Unit (and include this addendum in all future leases of the Replacement Units) to incorporate the tenant protections of the DA, including rent control on the Replacement Unit and the Existing Tenant’s right to a lifetime lease subject to the provisions of Rent Ordinance.</p>
Delete § 4.3.1(c):	<p>COMPENSATION FOR POTENTIAL LOSS OF PATIO OPEN SPACE</p> <p>Permits Existing Tenants to petition the Rent Board for a reduction in service due to the loss of a patio or balcony by deleting the following language in the DA.</p>
Amend § 4.4.5(a):	<p>EXTEND TIME FOR TENANTS TO SELECT REPLACEMENT UNITS</p> <p>Require a minimum of 45 days for Existing Tenants to select a Replacement Unit; actual time could be greater.</p>
Replace §4.4.8(a):	<p>IMPROVE MOVING BENEFITS FOR TENANTS</p> <p>Modeled on State Relocation moving benefits, require that (1) Developer pay all “actual” costs of relocation, including packing costs, using one or more bonded and licensed moving companies, or (2) allow Existing Tenants to arrange for their own moves and be paid a moving allowance (a “cash out”) equal to amounts payable under State Relocation Law.</p>
Add new § 4.6:	<p>STRENGTHEN TENANT RIGHTS DURING CONSTRUCTION PERIOD</p> <p>(1) Any tenant (new or existing) may petition for a rent reduction based upon construction impacts.</p> <p>(2) Any tenant on the Project Site as of the Effective Date of the DA who can demonstrate to the Rent Board that they have been significantly adversely</p>

	<p>affected by construction at any time may seek the following additional remedies:</p> <p>(a) Obtain full Relocation Benefits under the Rent Ordinance to allow tenant to permanently move off-site (at any time, before receiving an Existing Tenant notice); or</p> <p>(b) Relocate to an Equivalent Unit at their same rent on the Project Site at Developer's cost and preserve their future right to relocate to a new Replacement Unit or accept Relocation Benefits and leave at a later date.</p>
<p>Add new § 12.8 and 12.9:</p>	<p>NEW REMEDIES & PROTECTIONS FOR EXISTING TENANTS</p> <p>Provide express remedies for Developer's or future owner's failure to honor rent control provisions (a "Reneging Owner") or for a final judicial determination of unenforceability.</p> <p>(1) For a Reneging Owner, City may immediately terminate the DA & collect Rent Control Liquidation Amount plus maximum interest permitted under law. Rent Control Liquidation Amount is the net present value of the difference between the units with and without rent control plus 20%, or 120% the NPV.</p> <p>(2) For an adverse judicial determination before construction starts, City can terminate the entire DA.</p> <p>(3) For an adverse judicial determination after construction starts, the parties will meet and confer to maintain benefit of bargain and to protect tenants, and Developer/Owner cannot take any adverse action against tenants (including increase rents or evictions) until the matter is resolved or Developer/Owner pays the full Rent Control Liquidation Amount. Developer/Owner must either voluntarily continue to apply rent control rents via special Addendum lease terms or pay the Rent Control Liquidation Amount for the life of the Replacement Unit.</p> <p>City (acting through MOH) will use Rent Control Liquidation payments to provide permanent rent vouchers to affected tenants to cover the difference between rent control rent and rent charged by Developer/Owner.</p> <p>Tenants have separate rights of enforcement for all of rent control provisions. City has right of first refusal for all of the Replacement Units, for the benefit of City and its designee (i.e., Existing Tenants).</p> <p>Rent Control Liquidation Amount will be determined using CBRE methodology (currently estimated at approximately \$160M). If the Parties fail to agree on the amount, then baseball arbitration.</p>
<p>Revise §12.2:</p>	<p>Make clear that tenants are third party beneficiaries to the Development Agreement.</p>





ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

Date: June 17, 2013

PAUL A. RENNE
VICE-CHAIRPERSON

To: Members, Ethics Commission

BENEDICT Y. HUR
COMMISSIONER

From: John St. Croix, Executive Director

MIENNE S. STUDLEY
COMMISSIONER

Re: **Hearing – Ethics Complaint 01-130307**

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Enclosed is the Report and Recommendation for the above complaint referred from the Sunshine Ordinance Task Force. Luis Herrera is the named Respondent. Ray Hartz is the named Complainant. Staff originally scheduled this matter to be heard during the regular Ethics Commission meeting of April 22, 2013. The matter was postponed to be heard at this meeting. All parties received a copy of the Report and Recommendation and a Hearing Notice prior to April 22, 2013, pursuant to the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations").

Under the Regulations, neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

Under Chapter Three of the Regulations, the Executive Director shall prepare a written Report and Recommendation summarizing his or her factual and legal findings. Each Complainant and Respondent may submit a written response to the Director's Report and Recommendation. All responses to the Report and Recommendation are attached.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance.





ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

Date: April 1, 2013

PAUL A. RENNE
VICE-CHAIRPERSON

To: Members, Ethics Commission

BENEDICT Y. HUR
COMMISSIONER

Cc: Luis Herrera, San Francisco City Librarian
Ray Hartz
Members, Sunshine Ordinance Task Force

AMIEENNE S. STUDLEY
COMMISSIONER

From: John St. Croix, Executive Director

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Re: **REPORT AND RECOMMENDATION
ETHICS COMMISSION COMPLAINT NO. 01-130307**

INTRODUCTION AND JURISDICTION

On March 7, 2013, the Ethics Commission ("Commission") received a referral from the Sunshine Ordinance Task Force ("Task Force") for Task Force complaint number 11098. The written referral stated: "At the December 5, 2012 [Task Force] meeting the Task Force moved to refer Luis Herrera, City Librarian to the Ethics Commission for failure to comply with the Order of Determination, for violating Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission's minutes and Section 67.34 for willful failure to comply with the Order of Determination from the April 4, 2012 [Task Force] meeting [sic]." The referral stated that it was made under section 67.30(c).

Task Force referrals made under section 67.30(c) are heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance. Those hearings are conducted under the presumption that the Task Force findings were

correct, and staff has no role in investigating the underlying complaint. However, this referral also alleged a violation of section 67.34, as well as a request for the Ethics Commission “to investigate Luis Herrera, City Librarian for his willful failure to include public comment summaries in the body of the Library Commission minutes.” In addition, the motion that was made and voted on by the Task Force to refer the matter to the Ethics Commission included that it be referred as a willful violation. Thus, staff accepted this referral under section 67.34.¹

Sunshine Ordinance section 67.34 provides that complaints involving allegations of willful violations of the Ordinance shall be handled by the Commission. Complaints alleging a willful violation of the Ordinance by elected officials or department heads are handled pursuant to the Commission’s Regulations for Violations of the Sunshine Ordinance (“Regulations”), Chapter Three. The City Librarian is a department head. Under Chapter Three, the Executive Director must prepare a written report and recommendation summarizing his or her factual and legal findings, applicable legal provisions, and evidence gathered. The report and recommendation must also recommend whether or not a Respondent willfully violated the Ordinance, non-willfully violated the Ordinance, or did not violate the Ordinance. The Commission is not bound by the Executive Director’s recommendation.

SUMMARY OF FACTUAL FINDINGS

On December 15, 2011, Ray Hartz filed a complaint with the Task Force against Luis Herrera. The complaint alleged a public meeting violation on both November 17 and December 1, 2011, of Sunshine Ordinance section 67.16. Mr. Hartz alleged that on November 17, 2011, the Library Commission approved minutes for its meetings held on August 18 and October 6,

¹ The written Task Force Order, dated March 12, 2012, also included a finding that Luis Herrera violated Sunshine Ordinance section 67.21(e). However, that violation was not included in the Referral.

2011; and that on December 1, 2011, it approved minutes for its meeting held on November 3, 2011. Mr. Hartz alleged that in all three sets of minutes, various 150-word summaries submitted by Mr. Hartz and other members of the public were not included in the body of the minutes, thereby violating section 67.16 of the Sunshine Ordinance. Mr. Hartz alleged that the Task Force had already determined that any 150-word statement submitted to a City policy body must be included in the minutes.

On March 7, 2012, the Task Force held a hearing on the complaint. Mr. Hartz presented his case against Mr. Herrera. No Library Commission representative attended the hearing. Mr. Hartz stated that the 150-word written summaries were not included in the body of the minutes because the Library Commission placed the summaries at the end of the minutes in an addendum. He stated that the Task Force had already determined that placing the summaries at the end of the minutes is a violation of section 67.16. He stated that the Library Commission demonstrated that it willfully violated section 67.16 because it did not change its practice as to where it places the summaries in the minutes. Mr. Hartz stated that he included Mr. Herrera as the respondent because the City Librarian is ultimately responsible for ensuring that Library staff comply with Task Force determinations.

At that hearing, the Task Force concluded that Mr. Herrera violated section 67.16 by including the summaries at the end of the minutes, and section 67.21(e) for failing to appear at the hearing. The Task Force also instructed Mr. Herrera and the Library Commission to change the minutes so that the summaries are included within the body of the minutes and not at the end. The Task Force sent the matter to its Compliance and Amendments Committee ("CAC") to monitor compliance of the Order.

On May 15, 2012, the CAC held a meeting on the matter. Mr. Hartz was present and the Library Commission did not send a representative. Mr. Hartz stated that the Library Commission did not change the minutes as directed by the Task Force's Order. The CAC motioned to move the matter back to the full Task Force after finding that the Library did not comply with the Order.

On December 5, 2012, the full Task Force convened again to hear the matter. Mr. Hartz was present, as was Sue Blackman, the Library Commission Secretary. Mr. Hartz stated that the Library Commission continued to include the 150-word summaries at the end of the minutes, contrary to the Order from the Task Force. Ms. Blackman stated that Mr. Herrera had no involvement with the preparation or approval of the minutes. She stated that the Library Commission consistently followed the advice of the City Attorney which allows for the inclusion of written summaries in an addendum at the end of the minutes. The Task Force made a motion and voted to refer the matter to the Ethics Commission. The maker of the motion stated that the inclusion of section 67.34 was for the willful failure to comply with the Order. The Task Force issued a written referral to the Ethics Commission on March 7, 2013.

SUMMARY OF APPLICABLE LAW

Section 67.16 provides, in relevant part, that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes."

Section 67.34 states that "[t]he willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by

elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.”

SUMMARY OF EVIDENCE GATHERED

Staff reviewed the audio recordings of the Task Force hearing on the matter, the CAC meeting, and the subsequent full Task Force meeting. Staff also reviewed all documents submitted to the Task Force, and the minutes for the Library Commission meetings of August 18, October 6, and November 3, 2011 (see Appendix A). After reviewing the recordings and documents, staff determined that no interviews were necessary. All documents that staff reviewed are included in Appendix A.

LEGAL FINDINGS

There was no violation of section 67.16 because the Library Commission included Mr. Hartz's 150-word written summaries as required by the Sunshine Ordinance.

Section 67.16 of the Sunshine Ordinance requires boards and commissions to record minutes for each regular and special meeting. It also states that “[a]ny written summary provided by a speaker of no more than 150 words be included in the minutes.” The Office of the City Attorney has published an overview of the laws governing the conduct of public officials in its Good Government Guide. In this guide, the Office of the City Attorney has advised policy bodies that, because the written statement is not part of the official minutes adopted by the body, the statement may be included as an attachment to the minutes. (See SF Good Govt. Guide, Part 3, § IV(G)(2)(b), p. 133 – 134.)

In the minutes for the Library Commission meeting of August 18, 2011, the Library Commission included six 150-word summaries. The six summaries were included in an addendum and were each identified as to the speaker and to which agenda item each summary

was commenting upon. Mr. Hartz's summary was included in that addendum. In the minutes for the Library Commission meeting of October 6, 2011, the Library Commission included twelve 150-word summaries. Mr. Hartz had four summaries that were included in the twelve. The twelve summaries were included in an addendum and were identified as to the speaker and as to which agenda item each summary was commenting upon. In the minutes for the Library Commission meeting of November 3, 2011, the Library Commission included nine 150-word summaries. Mr. Hartz had two summaries that were included in the nine. The nine summaries were included in an addendum and were identified as to the speaker and as to which agenda item each summary was commenting upon. The addenda for all three sets of minutes at issue were not separate attachments, but followed the agenda items within the same document.

All of the 150-word summaries appeared in the minutes. The Sunshine Ordinance is silent as to where in a policy body's minutes any 150-word summary should be placed. Further, the Library Commission placed the summaries in the minutes as outlined in the Good Government Guide. Although the Task Force disagrees with the City Attorney's position, City departments rely on the advice provided in the Good Government Guide to ensure they are in compliance with various legal requirements. To date, the Task Force has not issued any policy advice to City departments regarding compliance with Sunshine Ordinance section 67.16, and on its website the Task Force directs users to the Good Government Guide as a legal reference. Because the 150-word statements were included in the minutes, staff finds that there is no violation of section 67.16.²

² The Commission received a prior referral from the Task Force on August 15, 2011, alleging, among other things, the same violation by the Library Commission for a different set of minutes (Complaint no. 06-110816). That matter was concluded under the Commission's prior set of regulations. In that matter, the Commission dismissed the section 67.16 allegation for the same reasons as outlined in this Report and Recommendation. In addition, the Ethics Commission

RECOMMENDATION

Based on the above reasons staff recommends that the Commission find that City Librarian Luis Herrera did not violate the Sunshine Ordinance as to all allegations referred by the Task Force.

dismissed Complaint no. 03-120402 at a public hearing on February 25, 2013, which alleged the same violation against the Library Commission for its meeting minutes of May 19, 2011, and June 16, 2011. At the hearing on February 25, 2013, the Library Commission asserted that, going forward, it was changing its policy regarding minutes so that the 150-word summaries will be placed at the point in the minutes that records each speaker's comments on an agenda item.



Tuesday, April 02, 2013

San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220

San Francisco, CA 94102

FILED
2013 APR -2 PM 1:13

SAN FRANCISCO
ETHICS COMMISSION

BY _____

To all members of the San Francisco Ethics Commission,

I am under no illusion that the hearing of Ethics Complaint No. 01-130307 will in any way be a fair hearing. The Ethics Commission will endeavor to dismiss this complaint as it did a similar complaint in February of this year. It will do so for the same reasons as it dismissed the prior complaint.

A brief history of this long, drawn out matter:

January 25, 2011 Ray Hartz v. Library Commission. This order of determination directed the Library Commission to place 150 word summaries in the body of the minutes. Under findings of fact and conclusions of law the Task Force wrote: **"The Task Force further noted that the statements should be within the body of the minutes to prevent public officials from unlawfully abridging unwanted or critical public comment."**

August 23, 2011 Ray Hartz v. Luis Herrera of the Public Library. This order of determination directed the City Librarian to place 150 word summaries in the body of the minutes.

December 14, 2011 Ray Hartz V. City Attorney Dennis Herrera. This order of determination noticed the City Attorney that the Task Force had found that placement of 150 word summaries, other than in the body of the minutes, was in violation of the clear wording of the ordinance. It further noticed the City Attorney that the advice given in the Good Government Guide was contrary to the clear wording of the law.

December 14, 2011 Ray Hartz V. Public Library. This order of determination found additional violations by the Library and the Library Commission for failing to place 150 word summaries as directed by previous orders from the task force.

February 28, 2012 Ray Hartz V. Ethics Commission. This order of determination found Executive Director John St. Croix in violation of the Sunshine Ordinance for failure to include 150 word summaries in the body of the minutes. Under findings of fact and conclusions of law, the task force said the following: **"The Task Force disagrees with the City Attorney's Offices' interpretation and continues to interpret the phrase "in the minutes" using the simple, plain language meaning of the words."**

March 7, 2012 **Ray Hartz V. Luis Herrera, City Librarian.** This order of determination found additional violations by the Library and the Library Commission for failing to place 150 word summaries as previously directed by the Task Force.

May 18, 2012 **Placement of Public Comment Summaries in Minutes.** (Sunshine Ordinance Complaint No. 11071, Hartz v. City Attorney. This memorandum noticed all city departments and agencies of the disagreement between the Sunshine Ordinance Task Force and the City Attorney's Office regarding the placement of 150 word summaries in the minutes of meetings. This memorandum reads in part: *"The Task Force disagrees with the Office of the City Attorney's interpretation of the requirements for inclusion of the public comment summaries in meeting minutes. Failure to include the summaries within the body of meeting minutes may result in the Task Force finding a violation of the Sunshine Ordinance, notwithstanding the City Attorney's advice to the contrary."* The memorandum continues: *"These findings are based on the purpose of the Sunshine Ordinance to maximize public access to public information and public meetings and limit the ability for public officials to abridge critical speech, on evidence presented at multiple task force hearings, and on careful Task Force deliberations over the past year."*

Tomorrow, March 3, 2012, there will be two additional hearings before the Sunshine Ordinance Task Force regarding this same matter! One hearing will be regarding additional violations by this Ethics Commission, with the second being focused on multiple violations by the Clerk of the Board of Supervisors, Angela Calvillo.

I find it very interesting that the so-called "investigation" conducted by the Ethics Commission staff failed to include any of the Task Force inquiries, discussions, deliberations, or findings in this matter. The investigation failed to look any further than the Good Government Guide, as it only wished to defend the actions of City departments and agencies, including this Ethics Commission. While it should be noted that this commission has changed its placement of 150 word summaries, it should also be noted that this was done without any discussion by this commission of its change in policy. It's as if a person who parked illegally and was ticketed on Monday, then again Tuesday, then again Wednesday, then again Thursday, finally parked legally on Friday and wanted the prior violations ignored!

The members of the Ethics Commission are in the awkward position of having to ignore two full years of findings contrary to their own position. The staff "investigation" allows them to do this. If they find the City Librarian in violation, they also acknowledge their own failure to act appropriately. The staff "investigation" allows them to do this.

If the investigation had gone beyond one page in the Good Government Guide it could, with even a cursory examination of the public record, uncover the reasons for the actions of the various commissions. For example, the minutes and recordings of the Library Commission meetings clearly establish the animus toward comments made by members of the public. The members of the commission have repeatedly, through word and action, attempted to either censor and/or abridge public comment. They did not like what members of the public had to say, and if they couldn't prevent

it being said, they would at least keep it out of the official record. If they couldn't keep it out of the record, they would place it where it was less likely to be seen. If they couldn't prevent it being seen, they use the same Good Government Guide, to justify prefacing the statement with a derogatory introduction. Anything to censor and/or abridge those with whom they disagree! You really have to look no further than the findings of this Ethics Commission recommending removal of Library Commission Pres. Jewelle Gomez, but that's not in the good Government guide is it?

And besides, if you were to find City Librarian Luis Herrera in violation, you would have to send a recommendation to the appointing authority, wouldn't you? And who is the appointing authority in this case, oh yes, the Library Commission. This is the same body that has dismissed your findings in regard to their Pres. Jewelle Gomez and reelected her, I forget, is it two or three times now? What would they be likely to do with your recommendation? They would ignore it of course! Here the Ethics Commission is also an awkward position: how many recommendations can you send, which are subsequently ignored, before your reputation is truly in tatters? These are, of course, rhetorical questions.

So, while I think we are all aware of what the findings will be in this hearing, I will participate in the farce. It will be one more set of facts on the public record to show how city departments and agencies have no problem violating the constitutional and/or civil rights of the citizens of San Francisco. I believe it is fair to say that the list of findings at the beginning of this letter clearly show the lengths that these bodies will go to in silencing their opponents! The findings of this Ethics Commission will only lengthen the record.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government





San Francisco Public Library

Date: June 11, 2013
To: Ethics Commission
From: Luis Herrera, City Librarian
Re: Ethics Complaint 01-130307

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ETHICS COMMISSION

The Ethics Commission heard a similar complaint regarding the Library Commission Minutes on February 25, 2013 and at that time found that there was no violation of the Sunshine Ordinance.

Since that time, the Library Commission, following the lead of the Ethics Commission in the modification of its own minutes concerning written summaries has adopted similar modifications to its minutes and is now including the 150 word summaries within the body of the minutes. (See Draft May 2, 2013 Library Commission Minutes attached.)

In the preparation of the Minutes discussed at this hearing, the Library Commission did follow Section 67.16 of the Sunshine Ordinance which requires that "any written summary provided by a speaker of no more than 150 words be included in the minutes." The Commission also has followed the Good Government Guide. The City Attorney has advised policy bodies that, because the written statement is not part of the official minutes adopted by the body, the statement may be included as an attachment or addendum to the minutes. (See City Attorney Opinion dated June 1, 2011). The Library Commission has included the 150 word summaries submitted by Mr. Hartz as an addendum and identified which agenda item each summary was commenting on. The addenda to the minutes are not separate attachments, but follow the agenda items in the same document. Despite this, the Sunshine Ordinance Task Force has found "willful failure to include the 150-word summary in the body of the minutes."

The Library agrees with the findings of your staff's recommendation that the City Librarian Luis Herrera did not violate the Sunshine Ordinance as to all allegations referred by the Task Force and continues to assert that the preparation of the Library Commission Minutes follows the law.

Attachments: Library Commission draft Minutes May 2, 2013

City Attorney Opinion dated June 1, 2011

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ALICIA CABRERA
Deputy City Attorney

DIRECT DIAL: (415) 554-4673

E-MAIL: alicia.cabrera@sfgov.org

MEMORANDUM

TO: Library Commission
FROM: Alicia Cabrera *AC*
Deputy City Attorney
DATE: June 1, 2011
RE: 150 Word Summary

You have asked the City Attorney's Office for advice on the following sentence in Section 67.16 of the Sunshine Ordinance: "Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." (S.F. Admin. Code § 67.16.)

The City Attorney's Good Government Guide, which is available on the City Attorney's website (under "Resources"), addresses this provision. The Good Government Guide states, at page 134:

The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code § 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment.

In addition, if the commenter's summary is included as an attachment to the minutes, we recommend that the text of the minutes cross-reference the attachment so as to direct the reader to the attachment. While the Sunshine Ordinance does not require the cross-reference, it will facilitate public access to written summaries of comments.

DRAFT

SAN FRANCISCO PUBLIC LIBRARY COMMISSION

Minutes of the Regular Meeting of May 2, 2013

The San Francisco Public Library Commission held a regular meeting on Thursday, May 2, 2013 in the Koret Auditorium Main Library.

The meeting was called to order at 4:36 pm.

Commissioners present: Gomez, Lee, Mall, Munson, Nguyen, and Ono.

Commissioner Randlett entered the meeting at 5:09 pm.

AGENDA ITEM NO. 1 GENERAL PUBLIC COMMENT

An anonymous citizen said at the last meeting he mentioned Le Mot de Coulter and the public comment fund. He asked the Commissioners if they thought that one day that is what they would stand for. He said the Commission thinks if you run your enemies out of town that will solve all of your problems. He said the benefit of running people out of town is that you never have to recognize any shared humanity. He said the Commission thinks it is killing his claim on humanity but it is killing its own.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate & Stop the Ignorance – Don't accept money from the Friends of the Library. "Maybe what you should do is what they used to do in the old Roman Republic – elect Ms. Gomez for the position of dictator for life and then at least the rest of us would have the hope an assassination might result in a change of leadership." Understanding Le Mot de Coulter, and the Public Comment Fund, you once would've been shocked. You put all of your eggs in one basket; getting rid of people once and for all; like old Cowboy movies – running your enemies out of town. The benefit is never having to recognize any shared humanity. You should develop the ears to hear people, or you shouldn't be representatives. You are killing your own claim on humanity.

Abandoning your humanity to serve the interests of money is the nightmare of the human race.

Ray Hartz, Director San Francisco Open Government, said he gave copies of a document from the Framework for each of you. He said he would be using graphics but because the Commission doesn't like what we say you want to abridge and censor it. He said we will be going back to the Sunshine Ordinance Task Force (SOTF) because he is sick and tired of the Commission trying to keep what we say out of the official record. He said the Framework states that "Friends will provide the Library or its designee with quarterly reports of its cash, pledges and other sources of funding." He said this was taken before the SOTF who found your City Librarian in violation of the ordinance. He said it has been referred to the Board of Supervisors requesting enforcement action against Luis Herrera. He asked if the two new Commissioners were going to participate in this ongoing fraud and deception of the public relating to the 50 to 60 Million Dollars the Friends have raised and expended.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

I have just passed out two pages from a document known as the "Framework." This first sheet is to ensure that none of the members of this Library Commission can pretend not to know what I'm talking about. The second sheet includes section 3.6 City Right to Audit. "Friends will provide the Library or its designee with quarterly reports of its cash, pledges and other sources of funding." Failure to produce these documents, among others, resulted in a March 7, 2013 referral to the Board of Supervisors requesting enforcement action against city librarian Luis Herrera. Mr. Herrera is probably working under the delusion that the BOS will not hear this referral. The board and the public will hear this matter, even if in two-minute increments spread out over a year! It would seem less painful for this commission to have a hearing, rather than experience a "Death by 1000 cuts."

Peter Warfield, Executive Director, Library Users Association, said the library unfortunately has a long and sad history of obstruction and making it difficult or impossible to get documents that are legally required to turn over. He said delays, redactions and refusals to turn over documents have been taken in some cases to the Sunshine Ordinance Task Force which is the body, whose members are chosen by the Board of Supervisors to be the watchdog of sunshine for the city. He said the Library Citizens Advisory Committee (LCAC) which was created by the Board of Supervisors and met for a number of years had the agendas and minutes posted on the library's website. He said there is now no mention on the website of the LCAC. He said there may be other ways to get at those records but an ordinary citizen with a reasonable search would not be able to find those records. He said he hopes that the Commission will pay attention to those sorts of problems at the Library.

**AGENDA ITEM 2. RESOLUTION HONORING FORMER LIBRARY
COMMISSIONER LARRY KANE**

President Gomez read a resolution honoring former Commissioner Larry Kane.

Public Comment

An anonymous citizen said we have to give you credit for putting this on the agenda. He said we rarely get a Commissioner of his level and he is the sort of person that comes on the Commission to give back to the community. He said Mr. Kane was just a few days short of 8 full years. He went over Mr. Kane's attendance record for each year he was on the Commission. He said there should have been 164 meetings during Mr. Kane's tenure and only 149 were held. He said Mr. Kane was late 64 times, he left early 19 times and he was absent 19 times. He said Mr. Kane only attended 49 full meetings out of 149 yet we consider Larry Kane one of the better Commissioners. He said Mr. Kane used to ask questions of the Friends of the Library and suggest that they report back to the Commission. He said this was intended to show how unaware Mr. Kane was of how sleazy the Friends are. He was faithful to the idea of additional hours and holding meetings at the branches. He said on balance, Mr. Kane was above average.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate & Ignorance – Don't give money to, or accept money from the Friends of the Library. Whatever opprobrium and obloquy we heap upon Mr. Kane he will consider an endorsement. Commissioners at his level want to serve humanity, rather than most who act like pigs. Mr. Kane's first meeting was May 5, 2005. The first year his attendance was absent once, late once. It went downhill from there. Even after moving to 4:30 he was still late 10 times in one year, absent four times. Overall, out of 149 meetings he was late 64 times and only attended 49 full meetings. Outrageously Mr. Kane would imply he was really unaware of how sleazy the Friends are. He knows. Mr. Kane was the first to nominate Jewelle Gomez as President, his idea of a joke. He spoke up for service to the public and meeting in branches, so overall above average.

Ray Hartz, Executive Director, San Francisco Open Government, said Mr. Kane has made some really solid efforts to improve the overall library. He said with all the praise there needs to be some balance to paint an honest picture. He said Mr. Kane willfully participated in a cover-up related to the Friends of the Library. He said Mr. Kane participated in actions to censor and abridge public comment. He said despite Mr. Kane's legal background, he never made any effort to protect the right to free speech.

He said Mr. Kane was willfully ignorant in the two areas he mentioned, betrayed the public trust placed in him and knows that this commendation is tainted.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

With all the praise for Commissioner Kane, there needs to be some balance to paint an honest picture. Throughout his years of service on the Library Commission, he knowingly and willfully participated in a cover-up related to the finances of The Friends of the San Francisco Public Library. Further, he participated in actions to censor and abridge public comment. Mr. Kane, despite his legal background, never asked why the Library Commission wanted to silence dissent and never made any effort to protect the right to free speech. Mr. Kane's only concern was that the city attorney said it was okay and that there was something to cover his ass! Thomas Aquinas teaches: "Willful ignorance of what one ought to know is a mortal sin." Mr. Kane was willfully ignorant in the two areas I mentioned, betrayed the public trust placed in him, and knows that this commendation is tainted.

Peter Warfield, Library Users Association, said he appreciates this being on the agenda. He said Larry Kane has recently been one of the most intelligent and conscientious of the Library Commission members. He said Mr. Kane followed issues and asked questions. He said Mr. Kane pushed for the expansion of library open hours, something that Library Users Association, has been pushing for years. He said unfortunately there are some down sides as you have heard and in general it was a disappointment that Larry Kane's questions were sometimes softball and he did not insist on a prompt fix he would ask for more information at a later date. He said Larry Kane voted to reelect Jewelle Gomez as President after she had been found by the Ethics Commission that her behavior was so egregious that she should be sacked by the Mayor. He said Larry Kane let things go without commenting or trying to improve things. He said eight years on the Library Commission is a good effort and public spirited and we appreciate that.

Iona Eisner said she is a student at San Francisco State University and is attending her first Library Commission meeting. She said she has been going to the library since she was 4 years old and she appreciates what Larry Kane has done and thinks he should be honored

Commission Discussion

Commissioner Ono said it was a great honor working with Larry and sitting next to him. She said Larry always asked the probing questions that she wanted to ask. She said she appreciated that Larry took the time when he went to the library with his family, to ask patrons what they thought about the library. She said Larry did that on his own time and he

did it because he cared. She said she appreciated that Larry brought his kids with him, because he wants them to learn. She said she will try her hardest to keep his mantra of getting more open hours. She said it was a great pleasure and honor to work with Larry Kane.

Commissioner Munson said he agrees with Commissioner Ono's comments. He said Larry Kane has been an exceptional commissioner on this Commission. He said the naysayers just spoke about their particular focus. He said the Commission has been managing well a program with total expenditures approaching \$200 Million. He said Larry Kane has always kept in mind the big picture and he thinks Larry deserves a special tribute.

Commissioner Nguyen said he would like to congratulate and thank Larry Kane for his enquiring nature and the wonderful courage and energy that he brought to the Commission. He said the willingness of Larry to ask the kind of questions he has asked has been very educational to him. He said he appreciates all that Larry has done for the Commission and he will miss having a fellow dimple chin on the Commission.

Commissioner Mall said she has only had the opportunity to meet with Commissioner Kane on one occasion and she is so sorry that they will not be serving on the Commission together. She said she was impressed that Larry Kane has been a partner in a major law firm in the city, on other nonprofit boards, his dedication to the youth of San Francisco, along with having his own children. She said there aren't a lot of people willing to take the time to dedicate themselves to something like the San Francisco Public Library the way Larry has and she said she thinks Larry is a remarkable person.

President Gomez said she relied on Larry Kane always for his tough questions and his perspective and good humor and she was always inspired by his bike riding to the meetings.

Motion: By Commissioner Ono, seconded by Commissioner Munson to approve a resolution honoring Larry Kane for his outstanding leadership and dedicated hard work as a member of the Commission and to hereby recognize, honor, commend and thank him.

Action: AYES 7-0: (Gomez, Lee, Mall, Munson, Nguyen, Ono and Randlett)

Larry Kane said his wife and daughters win on patience of him being late. He said thank you to the Commissioners for all their kind words and said it means a lot to him. He said he has learned a lot by serving on the Commission. He said that people can complain about the library and he has learned that the librarians and staff at the branches and the Main are some of the hardest working public servants that there are. He said it would not be the great library system it is without the great hard working librarians and staff. He said when he served he tried to keep three things in check when he asked questions or made decisions. He said he always

wanted to make our library the greatest public library system in America or the world. He said with Luis Herrera's leadership this system, if not already there, is on its way to becoming the greatest public library system ever and he thinks that is our goal. He said he wanted to make sure we were building branches for the next century and that we have open access hours for not just his kids but the kids he has coached and kids across the city especially those without access to computers. He said he always thought about disadvantaged people. He said there are certain aspects of the meetings he will not miss but he really enjoyed the opportunity to serve. He said he really appreciates this and hopes the Commission will keep up the good work.

AGENDA ITEM NO. 3 FINES AND FEES ORDINANCE

Luis Herrera, City Librarian, said this item follows the conversation from the last meeting. He said in the packets are the draft resolution, the draft ordinance, legislative digest, and the existing ordinance. He said the cover memo outlines the changes they are recommending to the Fines and Fees ordinance. He said they are recommending reducing the DVD overdue fines for adults/seniors from \$1 per day to \$.10 per day; a new fee for reproduction of photographs per project in an unlimited media; and scaled fees for scanning photographs based on higher resolution purposes.

Shellie Cocking, Collections and Cataloging Manager, gave a presentation on the streamline borrowing policies. She said the goal was to standardize item limits, loan periods, renewals and fines. She said they wanted to improve the user experience and create efficiencies. She explained the former item limits and fines. She said the goal was to have all media types have the same item limit, loan period, fines and renewal limits. She said they have made some changes and are now asking for the fines change. She addressed some of the issues that the Commission had raised during the previous meeting and gave some circulation and collection figures to address those issues. She gave some average prices for books, new hard covers and DVDs. She said there is no logical reason to charge more for late fees for DVDs.

Public Comment

An anonymous citizen said that the Commission says that it endorses sunshine violations, official misconduct and concealment. He said for the Commission to say that the citizens are negative and it is their own fault is a self-serving illusion that the Commission creates itself. He said it would have been important to have the approval of the minutes first so that you could reconcile what you were told last time. He said there were questions at the last meeting about whether the libraries fines and fees go into the budget and you were told quite rightly that the Supervisors create a mechanism where they add back the money that goes into the General Fund back into the Library Preservation Fund, but the secret is that it does not add to the Library Preservation Fund because it has a maximum

set by ordinance. He said the system was created because there was more demand than items for the DVDs.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. We are grateful to Mr. Munson for orienting the new commissioners. The Commission endorses sunshine violations, official misconduct and concealment. Making the citizens negative is an artificial illusion. By approving the minutes first, you could reconcile what you were told last time. This is the first time you have seen this resolution. In response to question about the fees going into the library's budget, you were told that the Supervisors cosmetically transfer an amount for the fine proceeds. The total budget is set by the Library Preservation Fund, which does not increase based on the fines transfer. The fines are a function of the frequency of the borrowing cycle, and fines for DVD's were created to replenish availability for the demand. I hope you will insist on answers to the questions you asked.

Peter Warfield, Executive Director, Library Users Association, said fines and fees deter usage. He said Sandy Berman is a well respected long time now retired former head librarian and he would like to play a recording left by him regarding this subject. He said we agree with the reductions but not the increases. The tape recording from Sandy Berman said that most fines are charged to increase revenue to secure extra funds. Sandy Berman said it is indisputable that fines deter library use by poor people.

Ray Hartz, Director San Francisco Open Government, said he likes that Commissioner Munson always talks about how negative the public comments are because it really shows the efforts to keep public comments out of the official record and to silence what we have to say because you don't like what we have to say. He said you take credit for everything positive that occurs and ignore anything that goes wrong. He said it is sensible if you are going to have fines that they are consistent and the lending periods should be consistent as well. He said it simplifies it for everyone. He said for a long time a multi disc DVD was put into different cases and now all of the DVDs in a set are lent out together. He said Commissioner Lee had raised the issue of a social contract at the last meeting. He said he does believe it is a social contract and that is the most important part of it. He said if people were made aware of the fact that they can renew online, fines wouldn't be an issue.

Commission Discussion

Commissioner Ono asked what type of impact the change in the DVD fee will have on the budget.

Luis Herrera, City Librarian, said we are hoping that the efficiencies we are creating will help offset the impact on the budget from the change in fees, and he said the change in fees will not have an impact on the operating budget.

Commissioner Lee said he has talked to a number of people, who said they think they will be deprived of an item because people will keep the items longer if the fines are reduced. He said he would like the Commission to reconsider reducing the fees.

Commissioner Munson asked about the efficiencies created.

Shellie Cocking, Collections and Cataloging Manager, said it is hard to estimate the savings in staff time that staff spends with unhappy patrons over the high fee for the DVDs. She said they have changed the borrowing policies by moving all television shows into one case.

Commissioner Munson said he wanted to clarify that now a person can take out the entire set of discs rather than wait for each individual disc to become available. He asked about the renewals of DVDs.

Shellie Cocking, Collections and Cataloging Manager, said if a patron has a hold on an item there is no renewal allowed.

Commissioner Munson said if people renew then there is no fine.

Luis Herrera, City Librarian, said it is all about facilitating access. He said we are looking at how we make the user experience better and how we eliminate barriers. He said all of the work the staff has done in reviewing the policies is really making a difference in improving the user experience.

Commissioner Mall said all other material is \$.10 a day

Commissioner Lee said DVDs are used three to one compared to other materials.

President Gomez said there is a higher percentage of borrowing books than DVDs.

Shellie Cocking, Collections and Cataloging Manager, said that books do not circulate as much as DVDs, but the smaller portion of books like NY Times bestsellers have a higher turnover than DVDs. She said when we are purchasing DVDs; we are now treating them equally to books. She said we make sure that we have at least one copy for every three holds so that the wait for patrons will never be too long.

Commissioner Mall said there is already a very generous policy on borrowing and since everything else is \$.10 she supports the proposal to decrease the fines on the DVDs,

President Gomez said she understands Commissioner Lee's position that people might keep things longer since the fines are higher to keep a DVD but she said she also thinks there is something good about having the fines be uniform that creates a culture of returning materials. She said she hopes we will be able to keep track of how this goes if we vote to support this.

Commissioner Randlett said it is too bad that we don't have a survey on this and we do not have a cost analysis. She said she is not sure we have the best information to make an accurate decision.

Luis Herrera, City Librarian, said we are getting a lot of feedback from the community about the differences in the fees. He said we went to the Council of Neighborhood Libraries recently and had a good conversation that it would make sense to give us some level of consistency. He said Commissioner Mall attended that meeting as well.

President Gomez said the Task Force has looked into this over the past year and she feels fairly confident that the Task Force members have based their recommendations on good information.

Motion: By Commissioner Munson, seconded by Commissioner Mall to approve the Resolution urging the Board of Supervisors to adopt the ordinance attached hereto standardizing overdue fees for materials, regardless of format; and increasing fees for services (scanning at higher resolutions than currently offered) and for reproduction of photographs for commercial purposes for a single media and unlimited media with a request for a report back to the Commission on the data related to the DVD fines in one year.

Commissioner Lee said he would be voting no on this motion but he wanted to clarify that his no vote was only related to the decrease in DVD fines.

Action: AYES 6: (Gomez, Mall, Munson, Nguyen, Ono, and Randlett)
NAY 1: (Lee)

Commissioner Mall asked if it is possible to have streaming videos in the future.

Luis Herrera, City Librarian, said we could see streaming in the future, but it is not here yet.

Shellie Cocking, Collections and Cataloging Manager, said there is a new product called Hoopla that some libraries are using that does stream video, music and audio books.

AGENDA ITEM NO. 4 CITY LIBRARIANS REPORT

Luis Herrera, City Librarian, said that Jill Bourne, Deputy City Librarian, has accepted the position of City Librarian for San Jose. He said we are

very proud of her and she will be with us throughout the month of May. He said she will begin her tenure in San Jose in July. He said we will have a wonderful send off for her. He said she has done a phenomenal job in her almost 7 years with us. He said beyond the leadership of her helping us to expand hours, she has taken some amazing initiatives with the Teen Center and other initiatives such as Green Stacks, BLIP, Library Journal Mover and Shaker in 2009 and has been instrumental in all of the initiatives of the Library. He said the second topic is that we are going to be bringing an additional day of service for our branch libraries. He said this was approved as part of this year's budget. He said the three branches are Visitacion Valley, Mission Bay and Portola. He said starting June 2 Visitacion Valley will be open on Sundays and on Monday June 3 both the Mission Bay and Portola Branches will be open on Mondays making all three of those branches seven day operations. He said what is exciting about it is that we know that summer is extremely important for our youth. He said last year we had over 14,000 participants in our Summer Reading Program. He said this is part of the process of revising and modifying the hours and we will be coming back on May 16 we will come back with more detailed rollout of our plans for the additional hours for the system. He said each of these libraries averages about 400-500 library users every day. He said Donya Drummond will give a presentation on the Jobs and Career Center.

Donya Drummond, Jobs and Careers Librarian, gave a presentation on the Jobs and Career Center. She said the collection went from 99% non-circulating to 99% circulating last spring, 2012 and we have seen a significant increase in usage since then. She explained the various collections available. She said there is a Jobs and Careers Bulletin Board. She said they have increased the programming for jobs and careers. She said they offer programs and classes in such areas as resume writing, how to use social media, and successful interviewing. She said the Center has offered author visits. She said the center uses social media including YouTube and Pinterest. She said many of the Libraries eLearning programs offer webinars, podcasts, online tutorials, video tutorials and others. She said ed2go is the Library's newest eLearning data base offering interactive six week courses. She said they have expanded the job seeker computer time. She went over highlights of the Jobs and Careers Resource Homepage. She said one of the things patrons are looking for is where to find jobs and the webpage has job listing websites using various criteria. She said the site also shows materials in the library that can be checked out and database resources. The Center also does outreach with other organizations in the area.

Public Comment

An anonymous citizen said he wanted to caution the Commissioners especially if they are new that there is a restriction that you not have a discussion of things not on your agenda. He said with respect to Jill Bourne and the expanded hours he hopes these subjects will come up at the last meeting in May. He said the Jobs and Career Center is very nice

and an important issue and he doesn't have anything negative to say about that right now.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate & Ignorance – Don't give money to, or accept money from the Friends of the Library. There is a legal prohibition against discussions that are not on the agenda. Previously this was a sore point, and I hope we are not going through that again. With respect to Jill Bourne and new hours in some branches, we need something in writing but presumably those subjects will come up again. This should not be the last meeting in May. The Jobs and Career Center is an important issue, so very nice. I am apprehensive about partnerships but I don't have anything negative to say about them right now.

Peter Warfield, Executive Director, Library Users Association, said congratulations to Jill Bourne and hooray for adding another day to the operations of three branches. He said that is an issue that Library Users Association has been promoting for many years including prior to the time the City Librarian arrived here. He said it is encouraging that our efforts have borne fruit. He said the City Librarian vigorously opposed adding any more time to branches and opening branches on Sundays. He said the Board of Supervisors set money aside for additional hours and the Library never used it. He said the Library did the same thing the following year and about six months later, a year and a half after the original discussion, the library finally started to implement some of the branches having additional days. He said Library Users Association encourages all of the branches to be seven day branches and certainly to have more evening and weekend hours. He said the Jobs and Career Center presentation was very interesting and he appreciates the color copies that were provided to the public. He said there are very serious privacy issues with such money making outfits as Facebook, and the Library still does not allow folks to simply save a Word document on the Library's computers.

Ray Hartz, Director San Francisco Open Government, said he is surprised Ms. Bourne is not here but he hopes she is enjoying her vacation. He said he hopes she is getting plenty of rest and getting herself in an excellent frame of mind for a well-deserved promotion. He said he wanted to thank Ms. Bourne for her service to the San Francisco Public Library. He said he believes the City of San Jose has made an excellent choice and he hopes that she will choose to make the citizens of San Jose true partners in her efforts to maximize the benefit of the public library. He said his suggestion to her would be to ask herself what would Luis Herrera do and do the opposite.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

I would like to thank Jill Bourne, Deputy City Librarian for her service to the San Francisco Public Library and to the citizens of San Francisco. I believe the City of San Jose has made a good choice in her selection to lead their library system. I believe Ms. Bourne has learned many valuable lessons from her tenure here at the public library. I hope that she will choose to make the citizens of San Jose true partners in her efforts to maximize the benefit the public library can bring to the citizens of the city. I hope she will truly welcome, and whenever possible, make use of citizen input. Above all, I hope she will instill in the operations of the San Jose Public Library, and the San Jose Library Commission, a practice of openness and honesty. My suggestion: ask "What would Luis Herrera do?" Then do the opposite!

Commission Discussion

Commissioner Randlett said it is excellent news about the additional hours and she said it would be great if we could do a press story in support of the City Librarian. She said she thinks that since she has been on the Commission that he has been both prudent and ethical in his decisions and none are made in a vacuum. She said she is pleased that Jill Bourne is moving on to a well deserved position and that she and the City Librarian worked very closely together and the City should be grateful for the City Librarian's leadership to help guide and prepare her for such a significant honor.

Luis Herrera, City Librarian said they plan a robust campaign to promote the new hours and roll it out in sync with the summer reading program.

Commissioner Randlett said she was really impressed with the Job and Career Center and she liked the presentation. She said it would be great to get some data from people who have used the Center and whom have gotten jobs. She said that would be a nice completion of the circle.

Commissioner Mall asked about the number of computers in the Center.

Donya Drummond, Jobs and Career Center Manager said there are 20 computers in the computer training room, where the job seekers lab is.

Commissioner Mall asked if those computers are all used.

Luis Herrera, City Librarian, said all of the computers in the library have the resources in them.

Commissioner Mall said she applauds everything that the Center is doing and she said there might be more opportunities for partnership with all of the growth in the Mid Market area.

Commissioner Ono said it was a great presentation and she didn't realize that there was eLearning available.

Donya Drummond, Jobs and Career Center Manager, said the Ed2Go has a lot of different job skill classes.

Commissioner Ono said she wanted to point out that Jill Bourne is not the first person to become a head librarian of another city, Brian Bannon before this became City Librarian of Chicago so she said it is a testament to the City Librarian's mentoring, managing and supervision and his nurturing and also his being Librarian of the Year.

President Gomez said thank you to the staff for a great presentation. She said for the last few years the City has really needed the Center.

Commissioner Lee said he agreed it was a wonderful presentation. He asked if they were working with the job seekers on networking.

Donya Drummond, Jobs and Career Center Manager, said they actually have held a networking class and she said using Social Networking like LinkedIn is an amazing way to tap into the job market.

Luis Herrera, City Librarian, said thanks to Edward Melton and Donna Marion and Maureen Singleton for getting us ready for the June 2 weekend for the new hours.

AGENDA ITEM NO. 5 LABOR UNION REPORT

There was no report at this meeting.

AGENDA ITEM NO. 6 APPROVAL OF MINUTES APRIL 4, 2013

Public Comment

An anonymous citizen said online minutes have referred to explanatory documents but there is no such reference in the hard copies. He said there are only three instances where the Secretary has changed my comments from what was submitted. He said on page 6 it should be "that there be no fines" not "there are". He said on page 10 it should read Stop the Hate, Stop the Ignorance" not "& Ignorance" and on page 11 it should not read "not subject" but should be "nor subject to." He said on page 12 Commissioner Randlett did not mean to make changes from the Anonymous Citizen. He said those changes were made to the Minutes with the implication that he wanted to preserve grammatical changes and that is not the case.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. Again the online version of the minutes refer to explanatory documents, but there is no such reference available for those who rely on the hard copy being approved here. Since the online minutes is a PDF, you are going out of your way to make it different. You will be happy to learn that there are only three instances where your secretary altered what I submitted. On page 6, "that there be no fines." Not, "there are." On page 10, "Stop the Hate, Stop the Ignorance." Not, "& Ignorance." On page 11, "nor subject to." Not, "not subject." On page 12, Commissioner Randlett did not mean to make changes from the Anonymous Citizen. The changes in the prior minutes were made. The implication was that I wanted to preserve grammatical errors and that is not the case.

Ray Hartz, Director, San Francisco Open Government, said the Library Commission and the City Librarian want to take credit for everything positive that occurs and deny responsibility for anything negative. He said they have been found by the Sunshine Ordinance Task Force to have censored and abridged free speech on numerous occasions and went on to explain the various violations. He said the Ethics Commission directed a change in the placement of the 150 word summaries and that change has not been made. He said the Commission seems to think this is a joke. He said you can either put it on the agenda and make a formal change of policy or we can go back to the Ethics Commission and tell them Mr. Herrera lied to them.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

As I said in the past, the Library Commission and the City Librarian want to take credit for everything positive that occurs and deny responsibility for anything negative. The Library Commission and the City Librarian had been found by the SOTF to have censored and/or abridged free speech on multiple occasions. The City Librarian has been found to have unlawfully withheld public records, in particular, the financial records I mentioned in general public comment. In violating the constitutional and civil rights of the public this commission and the City Librarian have pointed fingers at one another, each claiming it was the others decision. Before the Ethics Commission, the City Librarian promised a change in policy regarding the placement of 150 word summaries and has yet to keep that promise. A member of the Ethics Commission stated that if this change was not made, he would consider it a willful violation.

Peter Warfield, Library Users Association, said while the minutes give the appearance of lengthy summaries, some of the summaries make a hash out of what was said. He said on page 2 under General Public Comment it says "she intended on charging me" he said me should be changed to

him. He said on page 4 the last line of his remarks "the Excelsior Branch was said to have about a 10% cut in the books and she was silenced." He said it should say she was silenced at the meeting. He said the point was that branch had 68,000 books and the library was now saying the newly renovated branch would have 42,000. He said that whole sense of fraud in the reporting of what was going on was left out. He said there are repeated references to his comments as for example on page 10 where it says "he believes" and other places it says "he thinks". He said he does not make those types of comments, he simply states what he has to say.

Commission Discussion

Commissioner Ono said that under the Motion on page 12 she thought that the motion was to approve the Minutes of February 7, 2013 as amended to include the grammatical changes mentioned by the Anonymous Citizen. She said she thought that should be Peter Warfield instead of the Anonymous Citizen.

Sue Blackman, Commission Secretary said she thought that Commissioner Randlett in her motion was referring to the grammatical changes mentioned by the Anonymous Citizen and not the formatting changes mentioned by Peter Warfield.

Motion: By Commissioner Ono, seconded by Commissioner Munson to approve the Minutes of April 4, 2013.

Action: AYES 7-0: (Lee, Gomez, Mall, Munson, Nguyen, Ono, and Randlett)

AGENDA ITEM NO. 7 ADJOURNMENT

Ray Hartz, Director, San Francisco Open Government, said BF Skinner the father of behavioral conditioning said 'any behavior which is rewarded will be repeated.' He said when I make my comments and watch you afraid to lift your eyes because you know what I'm saying is right and you are embarrassed by it, that is a reward and it keeps me going. He said when you roll your eyes and make feeble excuses for each other another reward. He said it is just the three of us right now and all of you. He said he has fought for three years to get his statements into the Minutes and all you know that you did not put them in the minutes because you don't like dissenting opinions. He said you never refute our statements because you don't have anything to refute them with. He said he hopes the City Controller does an audit of the Friends and that you all get into the newspapers.

Peter Warfield, Library Users Association, said traditionally adjournment has been used for honoring people who have left this world and who were connected in some way to the library. He said because there are new Commissioners that there might be a recent pattern changed and that New Business would be included on the agenda as it has been in the past. He said it shuts the Commission up and prevents the

Commissioners from doing the job you were appointed to do in this city as public servants. He said to silence yourselves without ever saying anything about it is very unfortunate. He said there has been a lot of talk of naysayers and he said he doesn't think that is being a naysayer to say that we want more open hours, more money in the budget for books, or that the reduction in fines is not enough. He said there is a great deal of positive in people telling you about problems so that you can fix them. He said it shouldn't be your job just to ignore it.

Motion: By Commissioner Randlett, seconded by Commissioner Munson, to adjourn the regular meeting of May 2, 2013.

Action: AYES 7-0: (Lee, Gomez, Mall, Munson, Ono, Nguyen and Randlett)

The meeting adjourned at 6:52 pm.

Sue Blackman
Commission Secretary

Please note: These are draft minutes subject to revision by the Public Library Commission. Copies of commission minutes and handouts are available in the office of the secretary of the San Francisco Public Library Commission, 6th floor, Main Library, 100 Larkin Street, San Francisco, CA 94102-4733.

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6th floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <http://sfpl.org>. Additional materials not listed as explanatory documents on this agenda, if any, that are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

March 7, 2013

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Compliance and Amendments Committee recommendation for referral to the Ethics Commission in the case of Ray Hartz v Luis Herrera for allegedly not including a brief written summary of public comments within the body of the meeting minutes.

(Sunshine Ordinance Complaint No. 11098, Hartz v Luis Herrera, City Librarian)

Dear Ethics Commission,

On March 7, 2012, the Task Force heard Complaint No. 11098, by Ray Hartz ("Complainant") against Luis Herrera, City Librarian ("Respondent"). The Complaint alleged that Respondent failed to include, within the body of the official minutes, written summaries of public testimony of not more than 150 words supplied by members of the public, with regard to the minutes of the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings of the Library Commission.

Ray Hartz represented himself during the hearing, while Respondent did not appear. At the conclusion of the hearing, the Task Force found Respondent in violation of Sunshine Ordinance Section 67.16 for failure to include the 150-word summary of the Complainant's comments in the body of the Library Commission meeting minutes, and 67.21(e) for the Respondent's failure to appear at the hearing. The Task Force referred the matter to the Compliance and Amendments Committee to monitor compliance with its Order.

The Task Force issued an Order of Determination in this matter on March 12, 2012. The Order required that Respondent make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011 and November 3, 2011.

On May 15, 2012 the Compliance and Amendments Committee heard Ray Hartz (Complainant) provide an update on an order of determination from the April 4, 2012 full SOTF meeting. The Respondent (Luis Herrera) was not present to provide an update and respond to questions. The

<http://www.sfgov.org/sunshine/>

committee moved to refer the matter back to the Task Force with a recommendation that it be forwarded to the Ethics Commission.

At the December 5, 2012 SOTF meeting the Task Force moved to refer Luis Herrera, City Librarian to the Ethics Commission for failure to comply with the Order of Determination, for violating Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission's minutes and Section 67.34 for willful failure to comply with the Order of Determination from the April 4, 2012 SOTF meeting.

The Task Force recommends the Ethics commission investigate Luis Herrera, City Librarian for his willful failure to include public comment summaries in the body of the Library Commission minutes.

This request and referral is made under Section 67.30 (c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this Ordinance or the Acts.

Thank you for your timely attention to this matter. A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination. Please contact the Sunshine Ordinance Task Force Administrator at sotf@sfgov.org or (415) 554-7724 with any questions or concerns.



Kitt Grant, Chair
Sunshine Ordinance Task Force



David Sims, Member Attorney
Sunshine Ordinance Task Force

Encl.

cc: Ray Hartz, Jr., Complainant
Luis Herrera, City Librarian, Respondent
Jerry Threet, Deputy City Attorney

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
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TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

March 12, 2012

DATE THE DECISION ISSUED

March 7, 2012

RAY HARTZ, JR. v. LUIS HERRERA, CITY LIBRARIAN (CASE NO. 11098)

FACTS OF THE CASE

Complainant Ray Hartz alleges that San Francisco City Librarian Luis Herrera violated the Sunshine Ordinance by failing to instruct San Francisco Library Commission Secretary Sue Blackman to include Mr. Hartz's public comment summaries of 150 words or less within the body of minutes that were approved by the San Francisco Public Library Commission during meetings held on November 17, 2011 and December 1, 2011.

COMPLAINT FILED

On December 15, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against Mr. Herrera, alleging violation of Sunshine Ordinance Section 67.16.

HEARING ON THE COMPLAINT

On March 7, 2012, Ray Hartz presented his case to the Task Force. Neither respondent Luis Herrera nor an authorized representative appeared at the hearing or provided any other response to Mr. Hartz's complaint.

The Library Commission approved draft minutes for its regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011. Those minutes did not include public comments summaries that were submitted by public speakers in the body of the minutes, but rather included them as attachments to the minutes. Mr. Hartz alleged that, by approving these minutes, the Library Commission disregarded the Task Force's prior findings in Sunshine Complaints 10054 and 11054 that public comment summaries provided by members of the public must be included within the body of the minutes, not as attachments.

Mr. Hartz further stated he filed his complaint against Mr. Herrera rather than the Library Commission because Mr. Herrera is the direct supervisor of Library Commission Secretary Sue Blackman, who prepares the draft minutes. He stated that, as a managerial employee, Mr. Herrera is responsible for ensuring San Francisco Public Library employees comply with the Sunshine Ordinance, including requiring Ms. Blackman to place his public comment

summaries in the minutes. Mr. Hartz alleged that Mr. Herrera is either directing Ms. Blackman to ignore the Task Force's findings or failing to ensure she complies with the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concludes that Sunshine Ordinance Section 67.16 provides that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." The Task Force continues to interpret the phrase "included in the minutes" by using the plain meaning of the words, and finds that the public comment summaries must be placed within the body of the minutes, not as attachments. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" does not mean "attached to the minutes."

The Task Force further observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints regarding the Sunshine Ordinance's public meeting provisions. Sunshine Ordinance Section 67.30 requires the Task Force to "make referrals to a municipal office with enforcement power under this ordinance . . . whenever it concludes that any person has violated *any provisions of this ordinance*" (emphasis added). As it would be impossible for the Task Force to find a violation of the public meeting provisions of the Sunshine Ordinance without hearing complaints alleging such violations, the Ordinance plainly vests authority in the Task Force to hold such hearings and, based on the process outlined in Sunshine Ordinance Section 67.21(e), to require respondents or authorized representatives to attend such hearings.

DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission minutes and 67.21(e) for failure to appear at the Task Force hearing on the complaint.

Mr. Herrera and the Library Commission shall make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011 within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Costa)

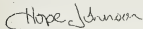
Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

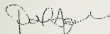
Absent: 3 – Cauthen, Wolfe, Chan

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant
City Librarian Luis Herrera, Respondent
Jewelle Gomez, President, Library Commission
Jerry Threet, Deputy City Attorney

**Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.*



APPENDIX A

000001

Date March 7, 2012

Item No. 11 & 12

File No. 11098

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST

ITEMS

Complaint submittal

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Completed by: Andrea Ausberry Date March 1, 2012

Completed by: _____ Date _____

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The complete document is in the file.



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SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

SAN FRANCISCO PUBLIC LIBRARY

Name of individual contacted at Department or Commission

LUIS HERRERA, CITY LIBRARIAN

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting

11/17/11 AND 12/1/11

Sunshine Ordinance Section

SECTION 67.16 MINUTES

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

PLEASE SEE ATTACHED

Do you want a public hearing before the Sunshine Ordinance Task Force?

☒ yes ☐ no

Do you also want a pre-hearing conference before the Complaint Committee?

☐ yes ☒ no

(Optional)¹

Name

RAY W HARTZ, JR

Address

839 LEAVENWORTH ST, #304

SAN FRANCISCO CA 94109

Telephone No.

(415) 345-9144

E-Mail Address

RWHARTZTR@SFGWLBAU.NET

Date

12/15/11

Signature

Ray W. Hartz

I request confidentiality of my personal information.

☐ yes

☒ no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Thursday, December 15, 2011

At a meeting of the San Francisco Public Library Commission on November 17, 2011 the commission approved minutes for the regular meeting of August 18, 2011 and the regular meeting of October 6, 2011. At a meeting of the San Francisco Public Library Commission on December 1, 2011 the commission approved minutes for the regular meeting of November 3, 2011. All documents were prepared by Ms. Sue Blackman, the Library Commission secretary. In both sets of minutes, 150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determinations issued by the Sunshine Ordinance Task Force (Determination #10054 Ray Hartz v Library Commission) and (Determination #11054 Ray Hartz v Luis Herrera, City Librarian. The meeting minutes approved at the above listed meetings are three additional violations of the ordinance. Ms. Blackman is a city employee under the direct supervision of Luis Herrera City Librarian. As her supervisor, Mr. Herrera is responsible for ensuring that Ms. Blackman performs her duties in accordance with applicable law. Mr. Herrera has either directed Ms. Blackman to ignore the task force ruling or has failed to ensure that she complies with that ruling in her preparation of the minutes submitted for approval. As a managerial employee, it is the responsibility of Mr. Herrera to ensure that all employees of the San Francisco Public Library comply with applicable laws, in this instance, the Sunshine Ordinance.

000004

File No. 11098SOTF Item No. _____
CAC Item No. 9**SUNSHINE ORDINANCE TASK FORCE**
AGENDA PACKET CONTENTS LISTSunshine Ordinance Task Force

Date: _____

Compliance and Amendments CommitteeDate: May 15, 2012**CAC/SOTF**

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Order of Determination
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Completed by: Andrea Ausberry Date May 11, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
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Tel. No. (415) 554-7724
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TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
March 12, 2012

DATE THE DECISION ISSUED
March 7, 2012

RAY HARTZ, JR. v. LUIS HERRERA, CITY LIBRARIAN (CASE NO: 11098)

FACTS OF THE CASE

Complainant Ray Hartz alleges that San Francisco City Librarian Luis Herrera violated the Sunshine Ordinance by failing to instruct San Francisco Library Commission Secretary Sue Blackman to include Mr. Hartz's public comment summaries of 150 words or less within the body of minutes that were approved by the San Francisco Public Library Commission during meetings held on November 17, 2011 and December 1, 2011.

COMPLAINT FILED

On December 15, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against Mr. Herrera, alleging violation of Sunshine Ordinance Section 67.16.

HEARING ON THE COMPLAINT

On March 7, 2012, Ray Hartz presented his case to the Task Force. Neither respondent Luis Herrera nor an authorized representative appeared at the hearing or provided any other response to Mr. Hartz's complaint.

The Library Commission approved draft minutes for its regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011. Those minutes did not include public comments summaries that were submitted by public speakers in the body of the minutes, but rather included them as attachments to the minutes. Mr. Hartz alleged that, by approving these minutes, the Library Commission disregarded the Task Force's prior findings in Sunshine Complaints 10054 and 11054 that public comment summaries provided by members of the public must be included within the body of the minutes, not as attachments.

Mr. Hartz further stated he filed his complaint against Mr. Herrera rather than the Library Commission because Mr. Herrera is the direct supervisor of Library Commission Secretary Sue Blackman, who prepares the draft minutes. He stated that, as a managerial employee, Mr. Herrera is responsible for ensuring San Francisco Public Library employees comply with the Sunshine Ordinance, including requiring Ms. Blackman to place his public comment

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

summaries in the minutes. Mr. Hartz alleged that Mr. Herrera is either directing Ms. Blackman to ignore the Task Force's findings or failing to ensure she complies with the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concludes that Sunshine Ordinance Section 67.16 provides that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." The Task Force continues to interpret the phrase "included in the minutes" by using the plain meaning of the words, and finds that the public comment summaries must be placed within the body of the minutes, not as attachments. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" does not mean "attached to the minutes."

The Task Force further observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints regarding the Sunshine Ordinance's public meeting provisions. Sunshine Ordinance Section 67.30 requires the Task Force to "make referrals to a municipal office with enforcement power under this ordinance . . . whenever it concludes that any person has violated *any provisions of this ordinance*" (emphasis added). As it would be impossible for the Task Force to find a violation of the public meeting provisions of the Sunshine Ordinance without hearing complaints alleging such violations, the Ordinance plainly vests authority in the Task Force to hold such hearings and, based on the process outlined in Sunshine Ordinance Section 67.21(e), to require respondents or authorized representatives to attend such hearings.

DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission minutes and 67.21(e) for failure to appear at the Task Force hearing on the complaint.

Mr. Herrera and the Library Commission shall make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011 within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Costa)

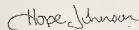
Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

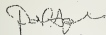
Absent: 3 – Cauthen, Wolfe, Chan

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant
City Librarian Luis Herrera, Respondent
Jewelle Gomez, President, Library Commission
Jerry Threet, Deputy City Attorney

**Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.*

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNS
Deputy City Attorney

Direct Dial: (415) 554-3970
Email: michael.karns@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Michael Karns
Deputy City Attorney
DATE: March 2, 2012
RE: Complaint 11098 – Hartz v. Library, et al.

BACKGROUND

Complainant Ray Hartz ("Complainant") alleges that the San Francisco Public Library (the "Library"), as well as City Librarian Luis Herrera ("Herrera") and Library Commission ("Commission") Secretary Sue Blackman, violated the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words supplied by members of the public during public testimony, with regard to the minutes of the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings of the Commission. Mr. Hartz further alleges that this violation occurred at the November 17, 2011 meeting of the Commission when it approved the the August 18, 2011 and October 6, 2011 minutes, and at the December 1, 2011 meeting of the Commission when it approved the November 3, 2011 minutes. Mr. Hartz further alleges that the violation is that of the Library and Herrera, as the Library employs the Commission Secretary and Mr. Herrera supervises here. Mr. Hartz's complaint identifies Administrative Code Section 67.16 as having been violated. Mr. Hartz further alleges that the above violation occurred after the Task Force had referred two previous identical violation, in Complaints 10054 and 11054, to the Ethics Commission.

COMPLAINT

On December 15, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

JURISDICTION

The Library has not contested jurisdiction to hear the complaint.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.16 governs the inclusion in the minutes of an 150-word statement of a member of the public summarizing their public comment made during a meeting.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED**Uncontested/Contested Facts**

Complainant alleges that Commission Secretary Sue Blackman created drafts minutes of the August 18, 2011 and October 6, 2011 general meetings of the Library Commission, which

MEMORANDUM

TO: Sunshine Ordinance Task Force
 DATE: March 2, 2012
 PAGE: 2
 RE: Complaint 11098 – Hartz v. Library, et al.

were presented to the Commission during their November 17, 2011 meeting. Complainant further alleges that Commission Secretary Sue Blackman created drafts minutes of the November 3, 2011 general meeting of the Library Commission, which were presented to the Commission during their December 1, 2011 meeting. Complainant further alleges that these draft minutes did not include in the body of the minutes several written statements of not more than 150 words that had been supplied by members of the public summarizing their public testimony during the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings, in violation of §67.16 of the Ordinance. Complainant further alleges that these violations occurred at the time that the Commission approved the above minutes on November 17, 2011 and December 1, 2011. Complainant further alleges that the violation is that of the Library and Herrera, rather than that of Ms. Blackman, because the Library employs the Commission Secretary and Mr. Herrera supervises her. Complainant identifies §67.16 of the Ordinance as having been violated. Complainant further alleges that the above violations occurred after the Task Force had referred two previous substantially similar violations, in Complaints 10054 and 11054, to the Ethics Commission.

Neither the Library nor Herrera has filed any response to this complaint. In response to previous substantially similar complaints (Complaints 10054 and 11054), the Library and Commission contested whether their actions constitute a violation of the Ordinance. According to the Library and Commission, the Ordinance requires only that the 150 word statement summarizing public comment be included in the minutes; it does not require that the summary be in the body of the minutes in the same location as the public comment which the statement summarizes. The Library further alleges that it has determined that the manner in which it includes the summary statements in its minutes comply with the ordinance and that the City Attorney has so advised them.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does the requirement of §67.16 that the Commission include a 150 word summary of testimony in its minutes, further require the Commission to include that summary in the body of the minutes specifically under that agenda item?
- Does including the 150 word summary as an addendum to the meeting minutes, with a reference in the body of the minutes, violate §67.16?
- Does the action of the Library and Commission, through the actions of Ms. Blackman, in doing so, knowing that the Task Force has previously ruled that summary must be included in the body of the minutes, constitute willful failure under §67.34?
- Does Mr. Herrera's failure to instruct Ms. Blackman to follow the instructions of the previous order of the Task Force in creating the minutes in question constitute "willful failure"?

LEGAL ISSUES/LEGAL DETERMINATIONS:**Under Section 67.16 of the Ordinance:**

- Determine whether Ms. Blackman's summarizing of complainant's testimony in the body of the meeting minutes, and the inclusion of his statement as an addendum to those same minutes with a reference to the summary in the body of the minutes, violated the requirements of §67.16.

Under Section 67.34 of the Ordinance:

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 2, 2012
PAGE: 3
RE: Complaint 11098 – Hartz v. Library, et al.

- Determine whether this failure is a "willful failure" under §67.34.
- Determine whether this failure can be attributed to Mr. Herrera, and/or whether his failure to instruct Ms. Blackman to follow the previous order of the Task Force is a "willful failure" under §67.34.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



Complaint #11098

Sue A. Blackman

to:

Andrea.Ausberry@sfgov.org, sotf@sfgov.org, Ray Hartz Jr

03/01/2012 03:51 PM

Cc:

Luis Herrera

Show Details

March 1, 2012

Members, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint #11098 Ray W. Hartz v. Luis Herrera

Dear Task Force Members:

This letter is in response to Complaint #110098 ("Complaint"), which was filed by Ray Hartz on December 19, 2011 against Luis Herrera, City Librarian ("City Librarian"). For the reasons set forth below, the complaint is without merit and should be dismissed.

The Complaint

The Complaint alleges that the City Librarian violated Section 67.16 of the Administrative Code when the Library Commission approved the meeting minutes for November 17, 2011 and December 1, 2011.

The complainant states that "150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determination issued by the Sunshine Ordinance Task Force (SOTF) (Determination #10054 Ray Hartz vs. Library Commission) and (Determination #11054 Ray Hartz v. Luis Herrera, City Librarian)."

A letter of referral for enforcement of Order of Determination No. 10054 was sent to the Ethics Commission on August 15, 2011. The Ethics Commission did not calendar the item and staff's recommendation was accepted. The Ethics Commission has already stated that the Library Commission was following the advice of the City Attorney and that city departments all rely in good faith on the advice of the City Attorney to ensure that they accurately adhere to the requirements of any law. Additionally, the Ethics Commission stated that the Library Commission has added a notation in the minutes that the 150 word statements are appended at the end of the Minutes. Finally, the Ethics Commission stated that "The Sunshine Ordinance provides no mechanism to compel a public official to attend a hearing before the Task Force regarding public meeting violations."

The City Librarian and the Library Commission continue to maintain that the current practice does not violate Administrative Code Section 67.16, which sets forth the requirements for meeting minutes. Charter commissions are required to include a number of requirements in the meeting minutes, including "any person speaking during a public comment period may supply a brief written summary of the comments which shall, if no more than 150 words, be included in the minutes."

The Good Government Guide 2010-11 Edition page 134 states: "The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code Sec. 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an

attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment."

In addition to following the Good Government Guide, the Library Commission requested a legal opinion from the City Attorney's Office as to whether the Library Commission is legally required to include the 150 word summary in the body of the minutes. The City Attorney's Office reiterated that the Library's practice of including the 150 word summary as an attachment to the minutes and incorporating by reference the attachment in the body of the minutes to clearly direct the reader to the commenter's summary complied with the legal requirement.

Conclusion

Nothing in the Commission Minutes of November 17, 2011, or December 1, 2011 violates the law. To the contrary, the Commission places the 150 word statement as an addendum and mentions it in the body of the minutes in accordance with the advice of the City Attorney's Office. Since the SOTF has previously ruled on a similar issue, we see no reason why this issue should be heard again.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this complaint, please do not hesitate to contact me.

Sincerely,

Sue Blackman
Custodian of Records,
Library Commission Secretary
San Francisco Public Library
100 Larkin Street
San Francisco, CA 94102-4733
415.557.4233

Official SFPL Use Only

Official SFPL use only



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2011 DEC 19 PM 4:22
BY LSC

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO PUBLIC LIBRARY

Name of Individual contacted at Department or Commission LUIS HERRERA, CITY LIBRARIAN

☐ Alleged violation public records access
☒ Alleged violation of public meeting. Date of meeting 11/17/11 AND 12/1/11

Sunshine Ordinance Section SECTION 67.16 MINUTES
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

PLEASE SEE ATTACHED

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no
Do you also want a pre-hearing conference before the Complaint Committee? ☐ yes ☒ no

(Optional)¹ Name RAY W HARTZ, JR Address 839 LEAVENWORTH ST, #304
SAN FRANCISCO CA 94109

Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SACGLWB4L.NET

Date 12/15/11 Signature Ray W. Hartz

I request confidentiality of my personal information. ☐ yes ☒ no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Thursday, December 15, 2011

At a meeting of the San Francisco Public Library Commission on November 17, 2011 the commission approved minutes for the regular meeting of August 18, 2011 and the regular meeting of October 6, 2011. At a meeting of the San Francisco Public Library Commission on December 1, 2011 the commission approved minutes for the regular meeting of November 3, 2011. All documents were prepared by Ms. Sue Blackman, the Library Commission secretary. In both sets of minutes, 150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determinations issued by the Sunshine Ordinance Task Force (Determination #10054 Ray Hartz v Library Commission) and (Determination #11054 Ray Hartz v Luis Herrera, City Librarian. The meeting minutes approved at the above listed meetings are three additional violations of the ordinance. Ms. Blackman is a city employee under the direct supervision of Luis Herrera City Librarian. As her supervisor, Mr. Herrera is responsible for ensuring that Ms. Blackman performs her duties in accordance with applicable law. Mr. Herrera has either directed Ms. Blackman to ignore the task force ruling or has failed to ensure that she complies with that ruling in her preparation of the minutes submitted for approval. As a managerial employee, it is the responsibility of Mr. Herrera to ensure that all employees of the San Francisco Public Library comply with applicable laws, in this instance, the Sunshine Ordinance.

File No. 11098SOTF Item No. 3
CAC Item No. _____**SUNSHINE ORDINANCE TASK FORCE**
AGENDA PACKET CONTENTS LISTSunshine Ordinance Task Force (SOTF)Date: December 5, 2012Compliance and Amendments Committee (CAC)

Date: _____

CAC/SOTF

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Memorandum
Order of Determination
Complaint and Supporting documents
Respondent's Response
Minutes

OTHER

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Completed by: Andrea AusberryDate November 27, 2012

Completed by: _____

Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
March 12, 2012

DATE THE DECISION ISSUED
March 7, 2012

RAY HARTZ, JR. v. LUIS HERRERA, CITY LIBRARIAN (CASE NO. 11098)

FACTS OF THE CASE

Complainant Ray Hartz alleges that San Francisco City Librarian Luis Herrera violated the Sunshine Ordinance by failing to instruct San Francisco Library Commission Secretary Sue Blackman to include Mr. Hartz's public comment summaries of 150 words or less within the body of minutes that were approved by the San Francisco Public Library Commission during meetings held on November 17, 2011 and December 1, 2011.

COMPLAINT FILED

On December 15, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against Mr. Herrera, alleging violation of Sunshine Ordinance Section 67.16.

HEARING ON THE COMPLAINT

On March 7, 2012, Ray Hartz presented his case to the Task Force. Neither respondent Luis Herrera nor an authorized representative appeared at the hearing or provided any other response to Mr. Hartz's complaint.

The Library Commission approved draft minutes for its regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011. Those minutes did not include public comments summaries that were submitted by public speakers in the body of the minutes, but rather included them as attachments to the minutes. Mr. Hartz alleged that, by approving these minutes, the Library Commission disregarded the Task Force's prior findings in Sunshine Complaints 10054 and 11054 that public comment summaries provided by members of the public must be included within the body of the minutes, not as attachments.

Mr. Hartz further stated he filed his complaint against Mr. Herrera rather than the Library Commission because Mr. Herrera is the direct supervisor of Library Commission Secretary Sue Blackman, who prepares the draft minutes. He stated that, as a managerial employee, Mr. Herrera is responsible for ensuring San Francisco Public Library employees comply with the Sunshine Ordinance, including requiring Ms. Blackman to place his public comment

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

summaries in the minutes. Mr. Hartz alleged that Mr. Herrera is either directing Ms. Blackman to ignore the Task Force's findings or failing to ensure she complies with the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concludes that Sunshine Ordinance Section 67.16 provides that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." The Task Force continues to interpret the phrase "included in the minutes" by using the plain meaning of the words, and finds that the public comment summaries must be placed within the body of the minutes, not as attachments. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" does not mean "attached to the minutes."

The Task Force further observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints regarding the Sunshine Ordinance's public meeting provisions. Sunshine Ordinance Section 67.30 requires the Task Force to "make referrals to a municipal office with enforcement power under this ordinance . . . whenever it concludes that any person has violated *any provisions of this ordinance*" (emphasis added). As it would be impossible for the Task Force to find a violation of the public meeting provisions of the Sunshine Ordinance without hearing complaints alleging such violations, the Ordinance plainly vests authority in the Task Force to hold such hearings and, based on the process outlined in Sunshine Ordinance Section 67.21(e), to require respondents or authorized representatives to attend such hearings.

DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission minutes and 67.21(e) for failure to appear at the Task Force hearing on the complaint.

Mr. Herrera and the Library Commission shall make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011 within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Costa)

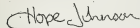
Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

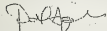
Absent: 3 – Cauthen, Wolfe, Chan

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant
City Librarian Luis Herrera, Respondent
Jewelle Gomez, President, Library Commission
Jerry Threet, Deputy City Attorney

**Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.*

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNs
Deputy City Attorney

Direct Dial: (415) 554-3970
Email: michael.karns@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Michael Karns
Deputy City Attorney
DATE: March 2, 2012
RE: Complaint 11098 – Hartz v. Library, et al.

BACKGROUND

Complainant Ray Hartz ("Complainant") alleges that the San Francisco Public Library (the "Library"), as well as City Librarian Luis Herrera ("Herrera") and Library Commission ("Commission") Secretary Sue Blackman, violated the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words supplied by members of the public during public testimony, with regard to the minutes of the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings of the Commission. Mr. Hartz further alleges that this violation occurred at the November 17, 2011 meeting of the Commission when it approved the the August 18, 2011 and October 6, 2011 minutes, and at the December 1, 2011 meeting of the Commission when it approved the November 3, 2011 minutes. Mr. Hartz further alleges that the violation is that of the Library and Herrera, as the Library employs the Commission Secretary and Mr. Herrera supervises here. Mr. Hartz's complaint identifies Administrative Code Section 67.16 as having been violated. Mr. Hartz further alleges that the above violation occurred after the Task Force had referred two previous identical violation, in Complaints 10054 and 11054, to the Ethics Commission.

COMPLAINT

On December 15, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

JURISDICTION

The Library has not contested jurisdiction to hear the complaint.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.16 governs the inclusion in the minutes of an 150-word statement of a member of the public summarizing their public comment made during a meeting.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts

Complainant alleges that Commission Secretary Sue Blackman created drafts minutes of the August 18, 2011 and October 6, 2011 general meetings of the Library Commission, which

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Ordinance Task Force
 DATE: March 2, 2012
 PAGE: 2
 RE: Complaint 11098 – Hartz v. Library, et al.

were presented to the Commission during their November 17, 2011 meeting. Complainant further alleges that Commission Secretary Sue Blackman created drafts minutes of the November 3, 2011 general meeting of the Library Commission, which were presented to the Commission during their December 1, 2011 meeting. Complainant further alleges that these draft minutes did not include in the body of the minutes several written statements of not more than 150 words that had been supplied by members of the public summarizing their public testimony during the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings, in violation of §67.16 of the Ordinance. Complainant further alleges that these violations occurred at the time that the Commission approved the above minutes on November 17, 2011 and December 1, 2011. Complainant further alleges that the violation is that of the Library and Herrera, rather than that of Ms. Blackman, because the Library employs the Commission Secretary and Mr. Herrera supervises her. Complainant identifies §67.16 of the Ordinance as having been violated. Complainant further alleges that the above violations occurred after the Task Force had referred two previous substantially similar violations, in Complaints 10054 and 11054, to the Ethics Commission.

Neither the Library nor Herrera has filed any response to this complaint. In response to previous substantially similar complaints (Complaints 10054 and 11054), the Library and Commission contested whether their actions constitute a violation of the Ordinance. According to the Library and Commission, the Ordinance requires only that the 150 word statement summarizing public comment be included in the minutes; it does not require that the summary be in the body of the minutes in the same location as the public comment which the statement summarizes. The Library further alleges that it has determined that the manner in which it includes the summary statements in its minutes comply with the ordinance and that the City Attorney has so advised them.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does the requirement of §67.16 that the Commission include a 150 word summary of testimony in its minutes, further require the Commission to include that summary in the body of the minutes specifically under that agenda item?
- Does including the 150 word summary as an addendum to the meeting minutes, with a reference in the body of the minutes, violate §67.16?
- Does the action of the Library and Commission, through the actions of Ms. Blackman, in doing so, knowing that the Task Force has previously ruled that summary must be included in the body of the minutes, constitute willful failure under §67.34?
- Does Mr. Herrera's failure to instruct Ms. Blackman to follow the instructions of the previous order of the Task Force in creating the minutes in question constitute "willful failure"?

LEGAL ISSUES/LEGAL DETERMINATIONS:**Under Section 67.16 of the Ordinance:**

- Determine whether Ms. Blackman's summarizing of complainant's testimony in the body of the meeting minutes, and the inclusion of his statement as an addendum to those same minutes with a reference to the summary in the body of the minutes, violated the requirements of §67.16.

Under Section 67.34 of the Ordinance:

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 2, 2012
PAGE: 3
RE: Complaint 11098 – Hartz v. Library, et al.

- Determine whether this failure is a "willful failure" under §67.34.
- Determine whether this failure can be attributed to Mr. Herrera, and/or whether his failure to instruct Ms. Blackman to follow the previous order of the Task Force is a "willful failure" under §67.34.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



Sunshine Ordinance Compliance
Ray Hartz Jr

to:

Tom DeCaigny

05/16/2012 01:58 PM

Cc:

SOTF, MSW Bruce Wolfe

Show Details

San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco , CA 94102
415/252-2590

Wednesday, May 16, 2012

Dear Director DeCaigny,

Please consider this an official communication with all members of the Arts Commission and include it as such in the agenda for the next meeting.

At the Sunshine Ordinance Task Force (SOTF) Compliance and Amendments Committee meeting last night, I was truly dismayed at the behavior of and statements made by the representative of the Arts Commission. Not only was she totally unprepared and unable to answer valid questions regarding the matter at hand, an Order of Determination from the full SOTF, she seemed simply defiant regarding the order. She presented no explanation as to why the Arts Commission had not previously responded in any way to the Order, but, simply stated that the Arts Commission did not intend to comply. The Committee voted to send the matter to the full Task Force with a recommendation that it be referred to the Ethics Commission. I feel that decision was not only correct, but, was the only possible alternative in response to the matter

The members of the Committee tried to explain the requirements of the law, but, your representative simply responded in ways that indicated she could or would not change the response. Members also tried to explain the requirements of not only the Sunshine Ordinance, but also the Brown Act, in supporting the Order of Determination. She seemed to pay little attention to what they said, took no notes of applicable sections of the law they were referencing, and did not even stay for the conclusion of the case. She obviously had more important things to do!

I have mentioned to the full Arts Commission the failure of it and some of its subcommittees to adhere to the requirements of the Sunshine Ordinance and the Brown Act. I have also mentioned my experience and those of others at the level of hostility to which I and other members of the public are subjected. While recent discussions have indicated the completion of necessary training and the signing of Sunshine Declarations by members of the Commission, I have serious doubts about whether members have a true understanding of the law or perhaps hold a belief that they don't have to comply. I would like to remind you and the full Arts Commission that compliance with both the Sunshine Ordinance and the Brown Act are not only a matter of law, but, also act as protection of each citizen's right to participate in governmental deliberations. Most importantly they are designed to protect the civil rights and legal rights of the public under both the Constitution of the State of California and the United States Constitution. The members of the Arts Commission have taken an oath in which they swore to support those documents and that includes all of the citizen rights that flow therefrom.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government



Fw: San Francisco Police Department contemplates prosecution against citizen exercising Constitutional rights!
Ray Hartz Jr

to:
SOTF
05/15/2012 11:28 AM
Cc:
MSW Bruce Wolfe
Show Details

Dear Ms. Ausberry,

Please include the following email chain in the documents for Case #12018 Ray Hartz v Greg Shur, Chief of Police.

Thank you.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

----- Forwarded Message -----

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>

To: Jennifer.Dorantes@sfgov.org

Cc: Greg.Suhr@sfgov.org; SOTF <sotf@sfgov.org>; MSW Bruce Wolfe <sotf@brucewolfe.net>; Paula Jesson <paula.jesson@sfgov.org>; Matt Dorsey <matt.dorsey@sfgov.org>; jsabatini@sfxaminer.com

Sent: Tue, May 15, 2012 11:17:45 AM

Subject: San Francisco Police Department contemplates prosecution against citizen exercising Constitutional rights!

Good morning Lt. Dorantes,

The SFPD, and in particular your division, could have complied with the Sunshine Ordinance and the California Public Records Act (CPRA) in accordance with both laws. For some reason, the Department chose to ignore the requirements of the law and waited well beyond any acceptable response date to raise these "justifications." You forced me to file a petition with the Office of the City Attorney, in his capacity as Supervisor of Records, to get you to finally admit to the existence of additional documents and provide justification for withholding. I believe this goes to a "pattern of behavior" of the Police Department and it's leadership to retaliate against those who question City government, especially the San Francisco Police Department.

I have asked that this response be included in the file for Sunshine Ordinance Task Force case # Case #12018 Ray Hartz v Greg Suhr, Chief of Police. This case is to be heard on June 6, 2012.

I have to say that I view your statement that "Neither the District Attorney nor Court has determined that a prosecution will not be sought, and the statute of limitations for filing charges has not expired." is really nothing but a ham-handed threat that action is being considered. I will speak to this matter before the Police Commission tomorrow, May 16, 2012

You leave me no choice but to file a Police complaint against Library Commission President Jewelle Gomez for the threats she made against me following the meeting of the Commission on February 2, 2012, including, but not limited to: knowing 12 people who would "fucking" bury me, that she wanted to throw the "fucking" microphone at me, that she wanted to "garotte" me with the microphone cord, and that she grew up in the "ghetto" carrying a "straight razor." These threats were published by the San Francisco Public Library on the Library website and remained there for several weeks. The statements have been verified by independent sources and also reported in the San Francisco Examiner. I guess since the SFPD has allowed itself to be used in this way, you leave me no choice but to fight "fire with fire" as a means of self-defense.

Previously I really was not fearful about Ms. Gomez comments, but, the SFPD response in withholding documents has made me reconsider filing a complaint against Ms. Gomez and the San Francisco Public Library. Ms. Gomez made the threats and the San Francisco Public Library posted those threats on their website. Now the San Francisco Police Department is threatening a "prosecution." I AM NOW TRULY FEARFUL, FOR MY SAFETY FROM BOTH MS GOMEZ AND THE SAN FRANCISCO POLICE DEPARTMENT!

Please be aware of a Sunshine Ordinance Task Force (SOTF) Order of Determination in case #10050 RAY HARTZ v POLICE COMMISSION found:

"Judging from the testimony and evidence presented, the Task Force finds that Mr. Hartz's comments to the commission constituted criticism protected by Section 67.15(d), and that the commission abridged that criticism in violation of same."

At that meeting the then Vice-President of the Police Commission, **Thomas Mazzucco, looked me in the eye and lied to my face**. He told me that I was not allowed to voice my criticism, a fact that as a lawyer, a member of the California Bar, a former prosecutor, a person subject to both Sunshine training and yearly filing of a Sunshine Declaration, had to know was not true. When I challenged Mr. Mazzucco that he was violating my Constitutionally protected right to speak, he said he was "just enforcing the rules," as if "the rules" could invalidate the protections of the United States Constitution, the Constitution of the State of California, the Brown Act, and the Sunshine Ordinance. This was also in total disregard to the oath he took when joining the commission!

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: "Jennifer.Dorantes@sfgov.org" <Jennifer.Dorantes@sfgov.org>
To: rwhartzjr@sbcglobal.net
Cc: Paula.Jesson@sfgov.org
Sent: Tue, May 15, 2012 10:30:13 AM
Subject: Immediate Disclosure Request

Good Morning Mr. Hartz,

Chief Suhr asked that I respond to your email regarding the status of the Department's investigation of

case number 120098278. At this time, that investigation is open but inactive.

Regarding your public records request for a copy of the police incident report in that case, and "documents produced in relation to this complaint," the Department does have responsive investigative records in addition to the police incident report that we provided previously. However, those records are records of a complaint to and an investigation conducted by a local police agency, and are exempt from production under California Government Code Section 6254(f). While San Francisco Administrative Code Section 67.24(d) provides for the disclosure of records pertaining to a law enforcement investigation in some circumstances, those circumstances do not apply here. Neither the District Attorney nor Court has determined that a prosecution will not be sought, and the statute of limitations for filing charges has not expired. According, the Department is not disclosing these additional responsive records.

If you have any further questions please feel free to contact me.

Lieutenant Jennifer Dorantes #559
Officer in Charge, Legal Division
San Francisco Police Department
850 Bryant Street, Rm 575
415-553-7929



Complaint #11098

Sue A. Blackman

to:

Andrea.Ausberry@sfgov.org, sotf@sfgov.org, Ray Hartz Jr

03/01/2012 03:51 PM

Cc:

Luis Herrera

Show Details

March 1, 2012

Members, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint #11098 Ray W. Hartz v. Luis Herrera

Dear Task Force Members:

This letter is in response to Complaint #110098 ("Complaint"), which was filed by Ray Hartz on December 19, 2011 against Luis Herrera, City Librarian ("City Librarian"). For the reasons set forth below, the complaint is without merit and should be dismissed.

The Complaint

The Complaint alleges that the City Librarian violated Section 67.16 of the Administrative Code when the Library Commission approved the meeting minutes for November 17, 2011 and December 1, 2011.

The complainant states that "150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determination issued by the Sunshine Ordinance Task Force (SOTF) (Determination #10054 Ray Hartz vs. Library Commission) and (Determination #11054 Ray Hartz v. Luis Herrera, City Librarian)."

A letter of referral for enforcement of Order of Determination No. 10054 was sent to the Ethics Commission on August 15, 2011. The Ethics Commission did not calendar the item and staff's recommendation was accepted. The Ethics Commission has already stated that the Library Commission was following the advice of the City Attorney and that city departments all rely in good faith on the advice of the City Attorney to ensure that they accurately adhere to the requirements of any law. Additionally, the Ethics Commission stated that the Library Commission has added a notation in the minutes that the 150 word statements are appended at the end of the Minutes. Finally, the Ethics Commission stated that "The Sunshine Ordinance provides no mechanism to compel a public official to attend a hearing before the Task Force regarding public meeting violations."

The City Librarian and the Library Commission continue to maintain that the current practice does not violate Administrative Code Section 67.16, which sets forth the requirements for meeting minutes. Charter commissions are required to include a number of requirements in the meeting minutes, including "any person speaking during a public comment period may supply a brief written summary of the comments which shall, if no more than 150 words, be included in the minutes."

The Good Government Guide 2010-11 Edition page 134 states: "The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code Sec. 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an

attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment."

In addition to following the Good Government Guide, the Library Commission requested a legal opinion from the City Attorney's Office as to whether the Library Commission is legally required to include the 150 word summary in the body of the minutes. The City Attorney's Office reiterated that the Library's practice of including the 150 word summary as an attachment to the minutes and incorporating by reference the attachment in the body of the minutes to clearly direct the reader to the commenter's summary complied with the legal requirement.

Conclusion

Nothing in the Commission Minutes of November 17, 2011, or December 1, 2011 violates the law. To the contrary, the Commission places the 150 word statement as an addendum and mentions it in the body of the minutes in accordance with the advice of the City Attorney's Office. Since the SOTF has previously ruled on a similar issue, we see no reason why this issue should be heard again.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this complaint, please do not hesitate to contact me.

Sincerely,

Sue Blackman
Custodian of Records,
Library Commission Secretary
San Francisco Public Library
100 Larkin Street
San Francisco, CA 94102-4733
415.557.4233

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Official SFPL use only



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 DEC 19 PM 4:22
LSC

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission

SAN FRANCISCO PUBLIC LIBRARY

Name of individual contacted at Department or Commission

LUIS HERRERA, CITY LIBRARIAN



Alleged violation public records access



Alleged violation of public meeting. Date of meeting

11/17/11 AND 12/1/11

Sunshine Ordinance Section

SECTION 67.16 MINUTES

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

PLEASE SEE ATTACHED

Do you want a public hearing before the Sunshine Ordinance Task Force?



yes



no

Do you also want a pre-hearing conference before the Complaint Committee?



yes



no

(Optional)¹

Name

RAY W HARTZ, JR

Address

839 LEAVESWORTH ST, #304
SAN FRANCISCO CA 94109

Telephone No.

(415) 345-9144

E-Mail Address

RWHARTZJR@SFGLOWAL.NET

Date

12/15/11

Signature

Ray W. Hartz

I request confidentiality of my personal information.



yes



no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Thursday, December 15, 2011

At a meeting of the San Francisco Public Library Commission on November 17, 2011 the commission approved minutes for the regular meeting of August 18, 2011 and the regular meeting of October 6, 2011. At a meeting of the San Francisco Public Library Commission on December 1, 2011 the commission approved minutes for the regular meeting of November 3, 2011. All documents were prepared by Ms. Sue Blackman, the Library Commission secretary. In both sets of minutes, 150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determinations issued by the Sunshine Ordinance Task Force (Determination #10054 Ray Hartz v Library Commission) and (Determination #11054 Ray Hartz v Luis Herrera, City Librarian. The meeting minutes approved at the above listed meetings are three additional violations of the ordinance. Ms. Blackman is a city employee under the direct supervision of Luis Herrera City Librarian. As her supervisor, Mr. Herrera is responsible for ensuring that Ms. Blackman performs her duties in accordance with applicable law. Mr. Herrera has either directed Ms. Blackman to ignore the task force ruling or has failed to ensure that she complies with that ruling in her preparation of the minutes submitted for approval. As a managerial employee, it is the responsibility of Mr. Herrera to ensure that all employees of the San Francisco Public Library comply with applicable laws, in this instance, the Sunshine Ordinance.



Notice to Parties for April 4
Hope Johnson to: SOTF
Cc: Bruce Wolfe, Jerry Threest, Rick Caldeira
Please respond to Hope Johnson

03/22/2012 06:33 PM

NOTICE TO ALL PARTIES IN SUNSHINE FILE NO. 11098:

The Sunshine Ordinance Task Force must rehear File No. 11098, Ray Hartz v. Luis Herrera. The complaint was originally heard on March 7, 2012; however, the response provided by respondents was not made available to the Task Force prior to or during the hearing. In an effort to provide due process to all parties, the Task Force will re-hear this complaint at its regularly scheduled meeting on April 4, 2012 at 4:00pm in Room 408.

Hope Johnson, Chair
Sunshine Ordinance Task Force

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March 07, 2012 - Draft

Select Language ▼

SUNSHINE ORDINANCE TASK FORCE
CITY AND COUNTY OF SAN FRANCISCO
Draft MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

March 7, 2012 – 5:00 PM

Rescheduled Meeting

Members: Chair Hope Johnson, Vice-Chair Bruce Wolfe,
David Snyder, Richard Knee, Sue Cauthen, Suzanne Manneh,
Allyson Washburn, Jay Costa, Hanley Chan, Jackson West

1. Call to Order, Roll Call, and Agenda Changes. (00:00:01 – 00:04:47)

The meeting was called to order at 5:17 p.m. Vice Chair Wolfe, Members Cauthen, Costa, and Chan were noted absent. There was a quorum. Member Costa was noted present at 5:40 p.m.

Member Knee, seconded by Member Washburn, moved to EXCUSE Vice Chair Wolfe and Member Chan.

Public comment: Jason Grant Garza spoke against the motion. Patrick Monette Shaw spoke in support of the motion.

The motion PASSED without objection.

2. Discussion of Survey of Costs of Compliance with City Sunshine Ordinance (00:24:33 – 1:27:06)

Task Force members discussed the Controller's survey of City agencies and departments, requested by Supervisor Scott Wiener, of costs of compliance with San Francisco's Sunshine Ordinance.

Member Washburn, seconded by Member Knee, moved that the Chair send a letter to Supervisor Wiener, on behalf of the Task Force, acknowledging the survey, expressing concern with the secrecy of the survey request, requesting clarification of motive and expected benefits, expressing concern with the survey instrument, offering input, and inviting Supervisor Wiener to attend a meeting to discuss the survey.

Public comment: Patrick Monette-Shaw; Thomas Picarello; Ray Hartz, Director, San Francisco Open Government; Peter Warfield, Executive Director, Library Users Association; and Hal Smith spoke in support of the motion.

The motion PASSED by the following vote:

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 – Cauthen

Excused: 2 – Chan, Wolfe

3. File No. 11090: Determination of jurisdiction on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:16 – 1:31:47)

Member Knee, seconded by Member Washburn, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

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4. File No. 11090: Hearing on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:48 - 2:49:10)

Complainant Patrick Monette-Shaw provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Monique Zmuda, Deputy Controller, provided an overview of the Controller's response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent did not provide a rebuttal. Complainant provided a rebuttal and again requested the Task Force to find violation.

Respondent stated the data requested by complainant existed in raw form and would require many hours to generate accurately in report form. The parties agreed to work to resolve the request with alternate data.

Member Snyder, seconded by Member Washburn, moved to CONTINUE THE MATTER TO THE CALL OF THE CHAIR.

Public comment: Ray Hartz, Jr., San Francisco Open Government, asked if program used to provide information to San Francisco Chronicle columnists Matier and Ross was still available. Peter Warfield inquired as to the purpose for the postponement of the item and for what result.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

RECESS

The Task Force reconvened at 8:19 p.m.

5. File No. 11095: Determination of jurisdiction on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the Task Force's regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

6. File No. 11095: Hearing on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

7. File No. 11096: Determination of jurisdiction on complaint filed by Arnita Bowman against the Department of Parks and Recreation for allegedly not providing requested documents and delayed response. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

8. File No. 11096: Hearing on complaint filed by Arnita Bowman against the Department of Parks and Recreation for

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allegedly not providing requested documents and delayed response. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

9. File No. 11097: Determination of jurisdiction on complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (Discussion and Action) (00:06:20 - 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

10. File No. 11097: Hearing on complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (00:06:20 - 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

11. File No. 11098: Determination of jurisdiction on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:06 - 3:08)

Member Knee, seconded by Member Washburn, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

12. File No. 11098: Hearing on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:08 - 4:07)

Complainant Ray Hartz, Jr. provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent was not present. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Deputy City Attorney Michael Karns responded to questions from Task Force members. Complainant provided a rebuttal and again requested the Task Force to find violation.

Member Washburn, seconded by Member Knee, moved (1) to find Luis Herrera in violation of Sunshine Ordinance Sections 67.16 and 67.21(e) for failure to include the 150-word summary of the Complainant's comments in the Library Commission meeting minutes and the Respondent's failure to appear at this hearing, and (2) refer the matter to Compliance and Amendments Committee.

Public comment: Peter Warfield, Executive Director, Library Users Association, said the Task Force should find that the Respondent committed a willful violation.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

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RECESS

The Task Force reconvened at 9:25 p.m.

13. File No. 12001: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:12 – 4:13)

Member Knee, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

14. File No. 12001: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:13 – 5:17)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Arts Commission response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Member Washburn, seconded by Member Manneh, moved (1) to find the Arts Commission in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond in a timely manner, 67.26 for failure to keep withholding to a minimum by providing unredacted speaker cards, and 67.27 for failure to justify withholding the redacted information; and (2) to refer the matter to Compliance and Amendments Committee.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

15. File No. 12002: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:17 – 5:18)

Member Knee, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

16. File No. 12002: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:18 – 5:42)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force to find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Agency's defense and requested the Task Force to dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Respondent provided documentation demonstrating the Arts Commission has revised the language on its speaker cards to notify members of the public they are not required to submit speaker cards in order to speak at meetings.

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Due to lack of a motion, the Task Force FOUND NO VIOLATION. MATTER IS CONCLUDED.

17. File No. 12003: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 - 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

18. File No. 12003: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 - 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

19. General Public Comment: (00:10:07 - 00:24:32 and 1:27:07 - 1:30:53)

A member of the public expressed concerns about the Library Commission splitting off 150-word comment summaries from their minutes. Patrick Monette-Shaw expressed concerns about his complaint pending at the Ethics Commission. Peter Warfield, Executive Director, Library Users Association, thanked the Task Force for changing the Task Force meeting day to Wednesday, and expressed concerns about the Library. Jason Grant Garza expressed concerns about what he termed lack of progress in handling complaints he has filed. Thomas Picarello expressed concerns about Jason Grant Garza's complaints, and suggested that Task Force meetings commence at 5:00 p.m. Ray Hartz, Jr. expressed various concerns.

20. Administrator's Report (5:44 - 5:45)

The Administrator's Report was reviewed.

Public comment: Peter Warfield suggested that more information be listed in the complaint log.

21. Announcements, Comments, Questions, and Future Agenda Items (5:45 - 5:46)

There were none.

22. ADJOURNMENT (5:46 - 5:47)

Member Knee, seconded by Member Manneh, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Task Force adjourned at 11:00 p.m.

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San Francisco Public Library

SAN FRANCISCO PUBLIC LIBRARY COMMISSION

Minutes of the Regular Meeting of August 18, 2011

(Approved as amended at the November 17, 2011 regular meeting).

The San Francisco Public Library Commission held a regular meeting on Thursday, August 18, 2011, in the Koret Auditorium, Main Library.

The meeting was called to order at 4:35 pm.

Commissioners present: Breyer, Gomez, Kane, Munson, Randlett, and Ono

Commissioner Nguyen was excused.

AGENDA ITEM NO. 1 PUBLIC COMMENT

An anonymous citizen said as part of the post-occupancy evaluation (POE) of the Main Library there was pressure to incorporate the critics into the process. He said he received a handwritten note from Charles Higuera inviting him to participate. He said they hired a professor from UC Berkeley to oversee the process and at the public hearing, she asked to tape record the meeting then instantly fell into a deep sleep. He said he waited for 30 seconds, rattled his chair, then thanked her and left. He said that was not only the first time anyone said his input would be welcome, but the last. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the library has installed its new policy for media which treats media items the same as books and it is a terrible idea. He said this will shrink the selection for members of the public and materials will be lost. He said the library hired an outside company to do a survey on the results of the new policy.

Ray Hartz, Director San Francisco Open Government, quoted one of his favorite authors Frank Herbert who said "Any training school for free citizens must begin by teaching distrust not trust; it must teach questioning not acceptance of stock answers." He said the Library

Commission should take this under consideration when monitoring its fiduciary duties over the Friends of the Library. He said there are two more sunshine complaints going before the Sunshine Task Force next week. He said one relates to the 150 word statements in the Minutes and one that relates to a request from the City Librarian for information. (See Addendum for a summary of this comment submitted by the speaker.)

AGENDA ITEM NO. 2 BRANCH LIBRARY IMPROVEMENT PROGRAM BUDGET TRANSFERS

Luis Herrera, City Librarian, said there is a memo in your packet explaining the requested actions on this item. He said the first is to increase the BLIP Program Reserve by \$1.089 million from the Visitacion Valley Infrastructure Fund revenue appropriated by ordinance in January 2011 that is now available to the BLIP. He said the other action is to transfer \$1.7 million from the Program Reserve to the new Bayview Branch Library Project. He said Ordinance 4-11 approved by the Board of Supervisors and signed by the Mayor in January 2011 appropriated \$2.169 million from the Visitacion Valley Infrastructure Fund (VVIF) to the public library for the Visitacion Valley Branch Library Project. He said since January, the Controller has released an additional \$77,000 in fee revenue for the project. He said a total of \$1.089 million from the VVIF is now available to the Library to fund the project. He said the Commission previously approved \$2.0 million from the Library Preservation Fund (LPF) appropriated in FY 2008-09 as an advance against receipt of VVIF revenue for the Visitacion Valley Branch Project. With appropriation and receipt of \$1.089 million from the VVIF, we are requesting that \$1.089 million of the \$2.0 million advance from the LPF be transferred to the reserve. He said approval of this request will increase the reserve from \$2.404 million to \$3.493 million. He said additionally there has been an increase in the Bayview project and he gave the history of the project and the change from the traditional design/bid/build contracting approach to a Construction Manager/General Contractor (CM/GC) for the purpose of increasing local hire. He gave additional details on the project and said the project was divided into 27 trade packages. He said the groundbreaking was wonderful and provided a hopeful spirit in the community. He said the reality is that there are increased costs for the project.

Public Comment

Willie Ratcliff said he owns Liberty Builders and he was awarded the Bayview Branch contract in November. He said the contract was rescinded before the November election and the library has to take some of the responsibility for adding \$1.7 million to the cost of the library. He said his bid was \$309,000 below the next highest bidder who does not live in the community. He said the Library Commission, DPW and Gavin Newsom actually discriminated against the businesses in the community. He said you should pay the contractor off, bring back Liberty Builders and

he guarantees that you won't have the pay an additional \$1.7 million. He said it was set up for failure.

An anonymous citizen said on November 18, 2010 you were told that this was an advance from the Library Preservation Fund. He said at that time you expected that the money wouldn't go back to the LPF because you would find some other use for that money. This seems to be the ratification of that. He said this is impossible to follow because there are many different reserves. He said there are two betrayals to the Board of Supervisors. He said this is not the accountability the public is entitled to. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the August 15 memo from the City Librarian is very difficult to understand. He said this looks like a naked raid on the Library Preservation Fund. He said it looks like you are taking the money from the VVIF and putting it into the Bayview Branch project instead of back into the LPF. He said the Bayview Branch project was originally estimated at \$3.8 million and has now skyrocketed to just a little bit less than \$10 million more, well over triple the original cost. He said the additional nearly \$2 million you are proposing now is a very hefty percentage of the very high previous budget. He said there are lots of questions about what is really going on with the Bayview Branch.

Mr. Carpenter said he was a lifetime resident of the Bayview. He said the building of a library complements the community but the residents that reside there are being forced out economically. He said when you upgrade a community and you don't give the residents an opportunity to upgrade their standing that is what brings about gentrification. He said he is here in support of Liberty Builders and they are a legitimate contractor in the community. He said we need jobs because our businesses are our economic base.

Ray Hartz, Director San Francisco Open Government, said in 2008 he was the field election deputy in the Bayview/Hunters Point area for both the primary and general election. He said he was in charge of nine of the polling places. He said he has followed with interest the lack of relationship between City government and the African American community. He said they came to the wrong group and it is a group that basically rubber stamps what the City Librarian puts in front of it. He said none of the Commissioners are anything but puppets to Ms. Gomez. He said what you have here is a dictatorship.

Commission Discussion

Commissioner Munson asked for a little bit more background on the issue with Liberty Builders.

Luis Herrera, City Librarian said there was a process through the Office of Contract Management. He said Liberty Builders was awarded the

contract and the process began to finalize the bid. He said he understood that the obligation was not met by Liberty Builders so the decision was made to go to the next qualified bidder in the process. He said there are legal requirements that govern the awarding of contracts. He said he understands that the process was adhered to.

Commissioner Kane said he was fearful of this circumstance when we switched from competitive bid to this Construction Manager/General Contractor process. He said this money could go back into our Library Preservation Fund to help our long term operations so we are making a tradeoff between library hours and long term service and getting the project done. He said he would like more information on possible increases to the budget of the project.

Luis Herrera, City Librarian said that the contract management process was not intended to reduce costs but rather to maximize the opportunity for local hiring. He said we knew there would be some potential consequences to that including possible cost increases and delay. He said we are working closely with DPW to contain costs.

Lena Chen, Bond Program Manager said out of the \$1.7 million we are requesting, \$1.6 million is for construction costs and the rest is soft costs. He said originally construction costs were at \$4.5 million and currently we are at \$5.7 million.

Luis Herrera said this is approximately a 35% increase.

Lena Chen, Bond Program Manager, said we have bid out 27 different trade packages. She said the only package for which there were no bids was for landscaping. She said there are several packages we are getting ready to reward, but basically we have a bid on 26 packages.

Commissioner Kane said there seems to be a disconnect in the information coming to the Commission and he would like to know where we are in this project.

Lena Chen, Bond Program Manager, said with this increase that should take care of the construction costs for the project.

Luis Herrera, City Librarian said there are additional projects that need to be closed out that will provide additional funds to go into the reserve. He said we will need to go to the balance of the Library Preservation Fund for anticipated increases in the North Beach project. He said we are confident that we will be able to complete the BLIP project and still maintain a healthy operation budget.

Commissioner Kane asked when the project is expected to be completed.

Lena Chen, Bond Program Manager, said the project is expected to be completed the end of 2012.

Edgar Lopez, Department of Public Works, said DPW has done everything possible to maximize bidding on the project. He said some of the contractors feel that there is going to be work stoppages, and that they might not make money. He said we have gone above and beyond what we have done on any other project. He said the awards are based on low bid. He said there are controls on the contractor for delays.

Commissioner Randlett said the Commission made a choice to do smaller bids. She said it appears even though we have done that the contractors have expressed concern about work stoppages. She asked about the percentage of packages that will be done by local firms.

Lena Chen said 10 out of the 26 packages are local.

Commissioner Randlett said she is sensitive and concerned about ballooning costs, but it appears that a year ago there was a commitment made to the community that some of the work would be done by members of the community. She said she is committed that a new library be built in the Bayview area.

Commissioner Ono had a question about KCK Builders and whether they are truly a local firm.

Lena Chen, Bond Program Manager, said they have met with KCK Builders and consider them to be a local firm.

Commissioner Breyer said his perception is that \$1.7 million is due to higher construction costs. He said 10 of the bid packages are local and of the 16 remaining there may be additional local companies.

Lena Chen said we have exceeded the goal of 30% set by the HRC and have already reached 46%. She said the electrical bid came in very high. She said other bids came in high as well. She said they are allowed to negotiate with the bidders. She said several have been rebid more than once.

Commissioner Kane said we need to have a first class library as quickly as possible for the citizens of Bayview. He said he will want to have an audit at the end of the project, so that there will be lessons learned for other city projects.

President Gomez said that the legacy of oppression is quite costly and we will ultimately be proud of the process and the outcome.

Motion: By Commissioner Munson, seconded by Commissioner Randlett to approve the budget transfer from the Visitacion Valley Infrastructure Fee revenue of \$1,089,489 to the BLIP program reserve; and to approve the transfer of \$1,736,448 funds from the BLIP program reserve to increase the Bayview Branch Library project budget.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Ono and Randlett).

AGENDA ITEM NO. 3. BOND PROGRAM MANAGER'S REPORT

Lena Chen, Bond Program Manager, said the approved budget is \$188,910,119. She said the Bayview Branch is in the construction stage and continuing with award of trade packages and the North Beach Branch is in the construction document phase. She said the Ortega Branch is scheduled to open on September 10, 2011 and the Golden Gate Valley Branch is scheduled to open in October. She said 20 projects are completed and open to the public. She showed photographs and gave reports on projects in construction including: Ortega and Golden Gate Valley.

Luis Herrera, City Librarian, said they have brought in more resources for the Ortega Branch in order to meet the schedule. And there have been conversations with the contractor about costs and having to change the scope of work to insure that the project is finished on time.

Jill Bourne, Deputy City Librarian, said that the mini Ortega branch that has been serving the community during the construction will be closing on August 22 and there will be bookmobile service on Monday, Wednesday and Friday until the new branch opens on September 10.

Lena Chen, Bond Program Manager, said there was a groundbreaking for the new Bayview Branch Library on Friday, July 22. She showed photographs from the groundbreaking and construction work at the site. She said the design team is working on construction documents for the North Beach Branch Library and the public art selection process has been started. She gave a summary of public outreach and awards won for the Bernal Heights renovation and the Ingleside Branch Library. She showed photographs from the opening of the Visitacion Valley Branch Library.

Public Comment

An anonymous citizen said he assumes you are probably asking yourselves why the revenue bonds did not meet the goals we thought they were going to meet. He said we will soon be back to the full staffing demands that the voters approved under the Library Preservation Fund. He said those demands are going to be drawing on the same reserve that the BLIP will be needed for, as well as the interest payments. He said the holes are all too obvious, but we will save the specifics for another day. (See addendum for a 150 word statement submitted by the speaker.)

President Gomez left the meeting at 5:57 pm and Vice-President Munson took over as chair of the meeting.

Peter Warfield, Library Users Association, said North Beach is going to cost well over double what was originally planned for, Ortega will be

approximately triple and Bayview is continuing to rise and will be around triple the cost. He said those costs will come out of available operating funds in what was the Library Preservation Fund with the original mandate to be spent on the operation of the library and not on structures. He said that is no longer the mandate. He said two items had been discussed and there has been no response. He said at the Bayview Branch there was a sculpture and he wondered what the final outcome was for that sculpture. He said he had mentioned a structurally beautiful very old urinal at the Golden Gate Valley Branch and he wondered what happened.

Commission Discussion

There was no Commission discussion on this item.

AGENDA ITEM NO. 4. CITY LIBRARIANS'S REPORT

Luis Herrera, City Librarian, said he would like to introduce our new Chief of Collections and Technical Services, Laura Lent. He said she has been with the library for a number of years and we are very proud to make this appointment. He said the Commission approved the funding for the Chinatown Him Mark Lai Branch Library Exterior Maintenance Project several years ago and we are moving forward with the project.

Roberto Lombardi, Facilities Director, said the contractor for the work on the Chinatown Him Mark Lai Branch Library is on board and the building will remain completely open and accessible to the public. He said the exterior will be cleaned and the terracotta decoration will be repaired and replaced. He said they expect the work to be done by September of this year.

Kathy Lawhun, Chief of Main, gave a little background on the Library's virtual reference services. She said virtual reference started with our email service in 1996. It started with over 100 questions a month and is now up to 650 questions a month. She said in 2000 the Library started its online chat service. She said there are librarians across the world answering questions. She said in 2007 the Library started its online tutoring sessions. She said a year and a half ago we started our instant messaging services with our third floor staff. She said this is real time, text based questions and this has been updated to Ref Chatter which is both text and chat. She said it is a popup on our website. She said you can add this number to your mobile device 871.4294 and you will be able to get your answer immediately. She said the original virtual reference was the telephone and we have been doing that for over 100 years.

Lisa Vestal, Chief Curator, gave an update on exhibitions including American Sabor, a traveling exhibition from the Smithsonian. She said it features Latinos in U.S. Popular Music and will be in the Skylight Gallery from August 27 – November 13. She said the opening program will be held Saturday, August 27 at 3:00 pm in the Koret Auditorium with the five time Grammy award winning John Santos Sextet. She said the Library

will also be hosting "Music for a City, Music for the World 100 years with the San Francisco Symphony" in the Jewett Gallery from September 8, 2011, through January 9, 2012. She said the exhibit shows the impact of the San Francisco Symphony from its formative years to its present position as one of the Country's foremost respected orchestras. She said for more information on all exhibitions you can go to: www.sfpl.org/exhibitions.

Luis Herrera, City Librarian, said thank you to Lisa Vestal and the Exhibition team. He said these are two wonderful examples of the diverse programs that the library offers.

Public Comment

An anonymous citizen said he is happy to see that we are spending money to preserve the historical features of our branches. He said preserving the historical nature of our branches is very important. He said he is also gratified to hear that we are going to have a program on the Latino musical contribution.

Peter Warfield, Library Users Association, said he wishes Mr. Lombardi would give a report about the sanitation and the smells that one can find in the Library's bathrooms. He said the basics are not being taken care of. He said he is always glad to hear about the exhibits, but he is very concerned about a book de-emphasis. He said with respect to the virtual reference he is glad to hear that all these accommodations are being made to people who are looking for this type of access to information but he would like to see more attention paid to the actual librarians who work serving patrons in the library.

Ray Hartz, Director San Francisco Open Government, said access to the graphics is the same as the 150 word statement in that it stifles public participation. He said there is no viable reason to not have the 150 word statement in the body of the minutes, which the Brown Act requires. He said the same thing goes with the graphics. He said 90% of the people at the meeting are staff. He said very few people come to the meetings because of the attitude of the Commission.

Commission Discussion

Commissioner Breyer said he appreciates the Instant Chat feature the Library has initiated. He said one feature that he is not impressed with is the email reminders that go out. He said that the wording is not very good and there is a lot you could do as far as marketing and getting the word out about library programs and information. He said this is a significant way in which lots of library users will see the library. He said he would like to hear the other Commissioner's thoughts about this.

Commissioner Kane said it is a fantastic idea to promote branch activities and other programs through email notifications. He asked about late fees

and fines since we are no longer doing paper notices. He asked about the cost and usage of the tutoring.

Kathy Lawhun, Chief of Main said over the last three or four years there have been over 10,000 uses per year for the tutoring services. She said it is on the kid page and the teen page on the website. She said it is marketed to the schools and the subscription is based on the usage and right now it costs about \$160,000. She said it has gone up in the past and it has now leveled out. She said there is a monthly report that we can provide to the Commission.

Commissioner Kane said the American Sabor exhibit is fantastic and hopefully the teacher lessons will be pushed out to the schools.

Jill Bourne, Deputy City Librarian, said after the last Commission discussion on the print notices, the library has decided to phase out the print noticing more slowly so the changeover to email notices has not yet been done.

Luis Herrera, City Librarian, said the potential savings from the print notices could offset other services like the tutoring costs. He said the amazing thing about the American Sabor exhibit is the number of partners involved in the program.

Brian Bannon, Chief of Information Technology responded to Commissioner Randlett's question about the email reminders. He said staff is looking at the overall digital strategy and a variety of different areas. He said one is greater customization for users and allowing users to have a more personalized approach. He said they will be looking at a more robust marketing plan for print notices. He said they will report back at a future meeting.

Commissioner Randlett would like to see Commissioner Breyer more involved in the process.

Luis Herrera, City Librarian, said he will give some consideration to the issue of Commissioner Breyer's involvement in the process.

AGENDA ITEM NO. 5. THE LABOR UNION REPORT

Cathy Bremer, third floor reference librarian and the Chief Steward of the Librarian's Guild of SEIU 1021, said that cities and counties are struggling economically and because of that some entities are looking at the privatization of libraries by a company named Library Systems and Services, Inc (LSSI). She said after a brief popularity people started to look at the services being provided by this company. She said LSSI runs 35 branches of the Riverside County Library. She said there is an immediate threat to Sonoma County. She said LSSI fires everyone on staff and then brings some back at much lower wages. She said State Assemblyman Das Williams put forth a bill AB438, which would provide taxpayers the right to important information about any proposal to

privatize local free libraries. She said she would like the Commission to consider having a resolution in support of this Assembly Bill. She said she would appreciate it if this could come back to the Commission at the next meeting as an action item.

Public Comment

An anonymous citizen said the idea that this Library Commission will take a stand in favor of public values and against privatization is when hell will freeze over next week. He said this brings so many ideas from this meeting together. He said the idea that the public could use the graphics as a gesture of equal treatment and citizen empowerment, ignores the reality that public attendance, public comment and access to documents was a struggle for decades, and those advances are endorsed in California statutes. He said a private company claims that if you don't take their deal of private fund-raising and private influence peddling. He said you recognize that from the Friends and Foundation. He said the Commission has already endorsed privatization with its support of privatization in the Civic Center Community Benefit District.

Commissioner Randlett left the meeting at 6:48 pm.

Peter Warfield, Library Users Association said he is very glad the union representative has talked about privatization and LSSI, which has a long and unfortunate history. He said this issue is worth learning about. He said he would like to see the information as soon as possible. He said he is concerned about some things about the legislation. He said you are still losing the public in public library. He said patron privacy and information independence is one of the most important things that public libraries can offer. He said those things will be lost when a corporation takes over. He said this Commission is not anti-privatization as it has shown in several instances.

Ray Hartz, Director San Francisco Open Government, said he supports the bill and it is designed to insure that public libraries do remain public and that is important for one critical reason and that is if it becomes a private entity there is no ability or willingness to respond to the public. He said the biggest savings will be employees and if you cut down the services they can discourage people from coming to the library. He said one of things that is always being discussed is outreach. He said he has never seen the Commission encourage people to come to these meetings.

Commission Discussion

Commissioner Breyer thanked the labor representative for her presentation and said he would like to consider action on the item at an upcoming meeting.

Commissioner Kane said he agrees and would like to see this scheduled for an upcoming meeting.

Luis Herrera, City Librarian, said he would be working with the City Attorney's office to look at the issue.

AGENDA ITEM NO. 6. ADJOURNMENT

There was no public comment on this item.

Motion: By Commissioner Kane, seconded by Commissioner Ono to adjourn the regular meeting of August 18, 2011.

Action: AYES 5-0: (Breyer, Gomez, Munson, Nguyen and Ono).

The meeting adjourned at 6:56 pm.

Sue Blackman
Commission Secretary

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6th floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <http://sfpl.org>. Additional materials not listed as explanatory documents on this agenda, if any, that are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

ADDENDUM

These summary statements are provided by the speaker: Their contents are neither generated by, nor subject to approval or verification of accuracy by, the San Francisco Public Library Commission.

Item 1: General Public Comment

Anonymous Citizen: Stop the Hate & Ignorance – Don't give or accept money from the Friends & Foundation

You must be already laughing at the public before they start for the momentum of ridicule.

This intersection of many forces in society is sometimes so emblematic that it resonates with a poetic power, as if the gods themselves were manipulating events to reveal the underlying reality.

During the post-occupancy evaluation there was pressure to incorporate the critics into the process.

I got a handwritten note from Charles Higuera inviting me to participate. They hired a professor from UC Berkeley. She was a handicapped individual which I support, but they failed to provide accommodation. Her handicap was narcolepsy.

At the public hearing, she asked to tape record, then instantly fell into a deep sleep. I waited over thirty seconds, then thanked her and left.

That was not only the first time anyone said my input would be welcome, but the last.

Item 1: General Public Comment

Ray Hartz, Director San Francisco Open Government: In accordance with the San Francisco Sunshine Ordinance of 1999, section 67.16 Minutes, I ask the following statement be entered in the minutes of this meeting. From the above listed section: "Any person speaking during the public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes."

One of my favorite authors, Frank Herbert, wrote the following:

"Any training school for free citizens must begin by teaching distrust, not trust. It must teach questioning, no acceptance of stock answers."

I believe the Library Commission should keep this thought in mind when carrying out its fiduciary responsibilities in monitoring the Friends of the San Francisco Public Library!

Item 2: Branch Library Improvement Program Budget Transfers

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

You were told at the Commission meeting of November 18, 2010, this was an advance from the Library Preservation Fund. I pointed out at that time that your administration told the Capital Planning Committee that the money would not go back because you would find other uses for that money. This seems to be ratified.

The memorandum is impossible to follow because when you use the term "return to the reserve," the BLIP, the Library Preservation Fund and the Visitation Valley Infrastructure Fund all have reserves.

You did not ask the Board of Supervisors for \$1.2 million for Bayview. Each fund should be accountable. Transferring money, just because you need it, is a betrayal of public consideration and of library priorities committed to under the Library Preservation Fund.

This is not the accountability the public is entitled to.

Item 3: Bond Program Manager's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

Wouldn't it be nice if the citizens had access to the graphics.

Presumably you have all used your magnifying glass, gone over that spreadsheet and know where the holes are.

You have probably asked yourself why the revenue bonds did not meet the goals we thought it was going to meet. Where is the staff impact? We are soon going to be back to the full staffing demands that the voters approved under the Library Preservation Fund.

Those demands are going to be drawing on the same reserve that the BLIP will be needed for, as well as the interest payments. Ask yourself what the impact would be if we didn't find ourselves in the midst of a recession.

The holes are all too obvious, but we will save the specifics for another day.

Item 4: City Librarian's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

Wouldn't it be nice if the citizens had access to the graphics.

I notice that the graphic has been advanced to the next item while I am still commenting on this one.

I am always happy to see that we are maintaining the historical features of our branches. There was no mention of how much it will cost. Still it is important to preserve the historical nature of our libraries.

I am also gratified to hear that we are going to have programs on the Latino musical contribution. Assistant City Librarian Jill Bourne claims she knows how to dance. Perhaps she will come to one of these programs and we can show off our Salsa.

Item 5: Labor Union Report

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends & Foundation.

This Library Commission will take a stand in favor of public values and against privatization; and hell is going to freeze over.

The idea that the public could use the graphics as a gesture of equal treatment and citizen empowerment, ignores the reality that public attendance, public comment and access to documents was a struggle of decades, and those advances are endorsed in California statutes.

The beast rears its ugly head, indeed. A private company claims that if you don't take their deal of private fund-raising and private influence peddling, you can have no libraries at all. You recognize that from the Friends & Foundation here. Its abuse and contempt that has prevented this institution from being accountable to the public.

You endorsed the privatization in the Civic Center Community Benefit District, so their goons can haul us away.



San Francisco Public Library

SAN FRANCISCO PUBLIC LIBRARY COMMISSION

Minutes of the Regular Meeting of October 6, 2011

(Approved at the regular Commission meeting of November 17, 2011)

The San Francisco Public Library Commission held a regular meeting on Thursday, October 6, 2011, at the Visitacion Valley Branch Library.

The meeting was called to order at 4:33 pm.

Commissioners present: Breyer, Gomez, Ono and Randlett

Commissioner Nguyen arrived at 4:49 pm.

Commissioner Kane arrived at 4:50 pm.

Commissioner Munson arrived at 4:52 pm.

AGENDA ITEM NO. 1 PUBLIC COMMENT

An anonymous citizen said the focus of public comment over the last few months has been that the Ethics Commission has found the President of the Commission guilty of conduct which "falls below the standard of decency required of all public officials." He said they also recommended her removal from office. He said he found a germane article in the New York Times with a quotation about the political system having abandoned its citizens and having lost a sense of responsibility for one another. He said the Library Commission feels that the idea that they should be constrained by ethical and moral considerations is just preposterous. He said the library has a network of self-serving interests called the "Friends of the Library" family. (See Addendum for a summary of this comment submitted by the speaker.)

Ray Hartz, Director San Francisco Open Government, said the Visitacion Branch Library is a beautiful one and gave his compliments to the librarian and those involved. He read a quote from one of his favorite authors, Frank Herbert that "politics is the art of appearing candid and completely open, while concealing as much as possible." He said he believes the Library Commission and Commission Secretary are truly

political creatures as opposed to public servants and that the City Librarian is first and foremost a true politician as is clearly shown in his repeated attempts to restrict public access to public records which related to the finances of the Friends of the Library. He said no one tries so hard to hide something, unless there is truly something to hide. He said the Library Commission has done nothing to oversee the finances of the Friends of the Library. He said millions of dollars are raised by the Friends and the Commission should be questioning how those dollars are spent. (See Addendum for a summary of this comment submitted by the speaker.)

Betty Paschal, resident of Visitacion Valley, said thank you to the Commission for opening this beautiful branch library.

Peter Warfield, Executive Director, Library Users Association, said he agrees with the previous speakers and said this is a very nice new building. He said the dysfunctional copying machines that have been installed in the branches are essentially unusable without considerable assistance. He said it has never been said that the 11 x 17 paper would not be available. He said he had to have two people assist him with doing basic copying and it still did not print properly. He challenged the Commissioners to be able to do basic copying and printing tasks. He said the Library has vandalized its oldest building on the front of the Park Branch with metallic inserts in the front of the building.

Eddie Epps, resident of Visitacion Valley, said thank you to the Commission from all the residents of Visitacion Valley for this beautiful new library. She said the library is a safe place for children and members of the community to get together and has made a big difference for Visitacion Valley.

President Gomez said that Item No. 8 approval of the Minutes of August 18, 2011, would be trailed to a later date because of a problem related to the posting of these minutes on the web.

AGENDA ITEM NO. 2. STATEMENT OF INCOMPATIBLE ACTIVITIES (SIA)

Jill Bourne, Deputy City Librarian, said there is a memo and background information in the packets about the Statement of Incompatible Activities (SIA). She said all City departments, boards and commissions are required to adopt a SIA. She gave a presentation on the requirements for the SIA and a chronology of events on the preparation of the SIA. She said the recommended edits include adding key policy and procedural documents that guide library specific activities; removing specific prohibitions that restrict staff activities in areas of: authorship, publishing, instruction, and exhibits; and adding language restricting activities of "officers" per Ethics Commission. She explained the specific edits within the document itself. She said Mabel Ng, Deputy Executive Director, Ethics Commission, is available to answer any questions from the Commission.

Public Comment

An anonymous citizen said on January 15, 2004 the Library Commission approved a SIA. He said he attended the Ethics Commission meeting on May 9, 2011 and was shocked to learn that the library staff was requesting an amendment to the SIA. He said the issue had not been before the Library Commission and since he brought that to the Ethics Commission's attention, Jill Bourne told the Ethics Commission that the 2004 policy had insufficient input from the staff and too much from the public. He said many issues, including a private digitization project, have been concealed and he said he was shocked that the Library Commission has been bypassed. (See Addendum for a summary of this comment submitted by the speaker.)

Ray Hartz, Director, Director San Francisco Open Government, said it is interesting to note that all of the Commissioners have shown up for this meeting. He said the Commission should ask the representative of the Ethics Commission about the letter they had sent to the Mayor asking that the President of the Library Commission be removed. He said the Sunshine Ordinance Task Force has found the Library Commission and the City Librarian in violation of the Sunshine Ordinance.

Andrea Grimes, Special Collections Librarian and SEIU officer, said the 2004 document was not a good document. She said there was very little input from the staff at that time. She said the Library Administration has worked carefully to insure that the library staff has been included in the preparation of this document. She said she is confident that this is a good document that will support staff in the work that they do for the public.

Peter Warfield, Library Users Association, said he would request the Commission not take action on this item today especially since the Deputy City Librarian said there is no urgency on this. He said the initial packet he received was a mess. He said there were multiple versions and none were labeled so it was very confusing.

Commission Discussion

Commissioner Munson said he did have similar issues with the attachments as did Mr. Warfield and he would like to see this item discussed today but that the Commission not take action at this meeting. He said some of the earlier drafts were too rigid. He said staff should be commended for taking this on.

Commissioner Breyer said he wanted to specifically know about what applies to the Commissioners and the administrative staff.

Mabel Ng, Deputy Executive Director Ethics Commission, said Commissioners can ask the Ethics Commission in advance to rule on certain types of activities. She said they would specifically like to know

what type of compensation is received and the type of vendor or contractor with the City. She said for staff an advance written determination would be from the City Librarian. She said for the City Librarian, it would be the appointing authority and for the Commission it would be the appointing authority, the Commission itself or the Ethics Commission. She said the Ethics Commission wanted to make sure there was no undue pressure from the Library Commissioners on the library staff.

Commissioner Randlett said she would like to support the recommendations by the Ethics Commission.

Luis Herrera, City Librarian, said he would like language drafted on the publication authorship issues as well as any other issue the Commission is concerned with.

President Gomez said we should give specific concerns to Jill Bourne, Deputy City Librarian who can then work with the Ethics Commission to draft specific language.

Commissioner Kane said the Commission does not approve specific contracts and the City Charter precludes Commissioners from undue influence.

Commissioner Breyer said he was curious about the types of examples of conflicts.

President Gomez said this item would be brought back to the Commission for further discussion.

AGENDA ITEM NO. 3. BRANCH LIBRARY IMPROVEMENT PROGRAM (BLIP) BUDGET TRANSFERS TO BLIP PROGRAM RESERVE AND PROGRAM MANAGEMENT BUDGET

Luis Herrera, City Librarian, said there is a memo in the packets that explains the requested transfers. He said the first is to increase the BLIP Program Reserve by a total of \$717,692 as a result of closing out the Richmond and Ingleside projects and decreasing the BLIP Bond Financing budget allocation and the second is to transfer \$795,250 from the Program Reserve to the Program Reserve to the BLIP Program Management budget.

Maureen Singleton, Chief Financial Officer, responded to questions from Commissioner Randlett and explained that the Richmond and Ingleside project closeouts were additional money in the budget after the projects were complete. She said the Richmond reduction is \$255,813, the Ingleside reduction is \$103,377 and the BLIP Bond Financing budget reduction is \$358,502 for a total of \$717,692 to be transferred to the BLIP Program Reserve. She said additionally they are requesting a transfer of \$795,250 to the BLIP Program Management budget from the Program Reserve. She said the Department of Public Works (DPW) provides the

BLIP Program management services for the Library. She explained the current and projected BLIP Program Management Costs. She said the proposed action is to increase the Program Management budget by \$795,250, which would cover the costs through 2012, when the Bayview Branch Library is anticipated to be complete. She gave the breakdown of the BLIP Program Management Costs. She said there has been a downward trend for each year as the projects have been completed. She outlined the line items for the BLIP budget transfers.

Public Comment

An anonymous citizen said the Commission recently approved transfers in August. He said there was no mention at that time about these transfers. He said we are told that the bond program management was funded through the end of 2012 and now we need three quarters of a Million for the same period. He said that if the library suddenly got three quarters of a Million dollars it seems we could have found some public services for that money. He said if you have come to the end of the program management that should be where we are saving money, not where we are increasing it. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said there are a great number of questions that seem not to be answered by the memo. He said he wondered why we are just now hearing about savings from the Richmond Branch, which opened a number of years ago and Ingleside as well. He said there is not a very good explanation for the numbers coming in and going out. He said the management costs are not delineated very clearly. He said the library could not afford \$30,000 for an alternative space while the Park Branch was closed and now there is additional revenue to be found.

Ray Hartz, Director of San Francisco Open Government, said he cannot tell whether the information provided is correct or not and whether there is enough information for the Commission to take action. He said he questioned the amount of \$400,000 a year for a program manager. He said this program has gone over budget and over time. He said he doesn't understand what is going on and he is sure the Commission doesn't either.

Commission Discussion

Maureen Singleton responded to a question regarding the Bond Program Manager's salary and said the salary is approximately \$130,000 with fringe benefit costs and overhead.

Commissioner Kane asked to see more detail on the amount.

Commissioner Randlett said she thought the information presented needed to have a little more detail than what has been presented.

Commissioner Kane said there has been a history of issues regarding soft costs. He said with only two projects going forward he is concerned about the amount for the soft costs.

Commissioner Randlett said every single renovation has different issues. She said it is more important to have transparency about what the figures are. She said she needs clarification as to what is being presented.

Luis Herrera, City Librarian, said there are a lot of variables that go into the cost of the BLIP. He said no one would have anticipated how long the program would take to complete. He said not too long ago there was a significant deficit and we were able to find additional resources. He said there have been issues on soft costs versus hard costs. He said what we are talking about now are indirect costs that we have no control over. He said that is the cost of doing business and we work closely with DPW to control costs.

Commissioner Kane said this is really funding the program management budget.

Maureen Singleton, Chief Financial Officer, said besides the two projects to complete there are closeouts of other projects that need to be taken care of.

Commissioner Randlett said there is also a delay in some of the close outs because there are State grants involved and the State audits have not been complete.

Commissioner Kane would like to know the construction budget for the Bayview Branch.

Lena Chen, Bond Program Manager, said the last budget for the Bayview project was \$13.5 million. She said the construction piece totals just over \$8.7 million.

Luis Herrera, City Librarian, said there are some DPW costs included within each project budget.

Jill Bourne, Deputy City Librarian, said the amount being discussed today is for administrative activities.

Commissioner Kane would like to know at another meeting exactly what the DPW costs are with this program.

Luis Herrera, City Librarian, said he urges the Commission to take action on this item today. He said there will be additional costs with the entire BLIP program.

Edgar Lopez, Deputy Manager with DPW, said the program management costs are not included in the soft costs. He said there is still a lot of work

to be done on the projects. He said they can come back with additional information if that will be helpful to the Commission.

Commissioner Munson said it would be helpful to receive more details.

Maureen Singleton said the amount requested would take the program through 2012. She said there is no money available now. This money is needed to support the program.

Commissioner Randlett said she was concerned about the need for the immediacy of the transfer.

President Gomez said this reserve was explicitly created for just this sort of thing.

Commissioner Munson asked if there could be an amount for a shorter period of time.

Motion: By Commissioner Kane, seconded by Commissioner Munson to approve the budget transfer from Richmond, Ingleside and the Bond Financing Cost budgets of \$717,692 to the BLIP program reserve and to approve the transfer of \$477,153 funds from the BLIP Program Reserve to increase the BLIP Program Management budget through June 30, 2012.

Action: AYES 7-0: (Breyer, Gomez, Kane, Munson, Nguyen, Ono, and Randlett).

AGENDA ITEM NO. 4 BOND PROGRAM MANAGER'S REPORT

Lena Chen, Bond Program Manager, said the approved budget is \$188,910,119. She said the North Beach Branch is in the construction document phase. She said the Golden Gate Valley Branch is scheduled to open on October 15, and the Bayview Branch is in construction. She said after next week there will be 22 branches complete and open. She showed photographs and gave reports on projects in construction including: Golden Gate Valley and Bayview. She said the design team for the North Beach Branch Library has just completed 50% construction documents and she showed some of the designs. She showed slides from the opening of the Ortega Branch Library.

Roberto Lombardi, Facilities Director, gave an update on post-BLIP follow up for the Richmond, Potrero, and Park Branches. He said there were a few leak problems with the Richmond Branch, which have now been corrected and a few HVAC issues which they are still working to correct. He said at the Potrero Branch there were some issues with waterproofing one of the walls so the branch was dosed for a few days to correct that. He said there was an issue with the spacing between buildings at the Park Branch which caused a security problem so they have been working with the neighbor and are working on correcting the problem.

Public Comment

An anonymous citizen said he is not sure it is such an occasion for completing 22 branches when it is so far behind schedule and that delay has caused enormous problems. He said he is sure you count your blessings because of the collapse of the economy, because if the economy had not collapsed, the BLIP certainly would have had egregious cost overruns in good times. He said he did go to the Ortega opening and it was a gorgeous day and many young people were excited about the opening of the playground at the same time. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the Ortega opening was quite festive and he is looking forward to the Golden Gate Valley Branch Library opening. He said apparently the beautiful sculptural urinal was not saved at the Golden Gate Valley Branch. He said the Park Branch Library façade as an historic building should not have been touched and certainly after all the discussion that took place at the Historic Preservation Commission about the branch. He said it was not a good idea that this was done without any public discussion.

Ray Hartz, Director of San Francisco Open Government, said since he has been coming to these meetings the BLIP program has been a constant concern to him. He said it seems like staff always comes to the Commission at the last minute with requests for budget transfers and says they have to have the money today or everything will stop.

Mindy Linetzky, Branch Library Improvement Program Administrator, said there was a wonderful article on the front page of the San Francisco Chronicle about the Branch Library Improvement Program and how it has flourished and how the libraries are doing a wonderful job. She said she has worked on the program for 9 ½ years and now she is only doing 50% time and will be off the program by the end of the year. She said the Chronicle article was sort of the best present she could get.

Commission Discussion

Commissioner Kane thanked Mindy Linetzky for her incredible work over 9 years.

Commissioner Randlett said that independent journalists clearly did their homework and found that the program was successful and that says a lot. She said she appreciates the public comment and she asked that members of the public please consider that Commissioners do listen to what the public has to say and she hopes there will be some level of decorum in the meetings.

President Gomez thanked Commissioner Randlett for her insightful comments.

Commissioner Munson there has been very negative comments about how long the BLIP program has taken. He said we have 21 really great completed branches. He said we are taking advantage of opportunities and making the branches better. He said the library system is very healthy. He said we would all appreciate a civil atmosphere.

Commissioner Nguyen left the meeting at 6:45 pm.

AGENDA ITEM NO. 5 GENERAL STATEMENT ON PRIVATIZATION OF LIBRARIES

Luis Herrera, City Librarian, said a couple of meetings ago the labor group brought to your attention information regarding Assembly Bill 328. The Bill was discussed at the next Commission meeting and the Commission requested that a general on the Privatization of Public Library Systems be brought back to the Commission for discussion and action.

Public Comment

An anonymous citizen said the members of the public have always been a force for respect and civility and demanded equal treatment and not gotten it. He said if you want to change that, the ball is in your court. He said Assembly Bill 438 was sent to the Governor on September 22. He said his understanding is that it is still unsigned and unvetoes, or it becomes law without signature. He said the Board of Supervisors had this item on its agenda but they continued an endorsement of this bill. He said he heartily endorses this statement. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said he certainly aims for civility and he appreciates some of the actions by the Commission at this meeting. He said the Statement on Privatization came out of a request for the Commission to endorse Assembly Bill 328, but he does not see any reference to that in this statement. He said he would support the Commission approving this Statement but would like to see support for the Assembly Bill as well.

Ray Hartz, Director San Francisco Open Government, said one of his favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." He said the statement before the Commission says that they affirm the independence, freedom and effectiveness of the American public library. He said this sounds good, but unfortunately it does not hold true when a citizen wants to access public regards, he said then the word "freedom" is conveniently disregarded. He said this is especially true when it relates to the Friends of the Library and how their money is raised and expended. He said if he were the City Librarian, he would not want anyone looking at the annual City Librarians Discretionary Fund in which the Friends provide him amounts in excess of \$35,000 per year. He said if someone respects his right to free speech then he would return the

favor, but he simply gets a body that looks the other way and denies his civil rights. (See Addendum for a summary of this comment submitted by the speaker.)

Motion: By Commissioner Kane, seconded by Commissioner Ono to approve the following Statement on Privatization of Public Library Services: American public libraries are a public good – a common resource available to all, funded by public dollars and governed by local residents. They are an essential public service and should remain directly accountable to the public they serve. Maintaining the control and oversight of operations is critical to preserve a strong and viable library system. In light of the recent and growing trend of local municipalities considering the privatization of library services, the San Francisco Public Library Commission wishes to affirm its commitment to a free and public library system. Privatization threatens the loss of local community control of the library, its services and expenditures of tax dollars. As members of the San Francisco Public Library Commission we are dedicated to the life of the public commons, reject the privatization of public libraries and uphold and affirm the independence, freedom and effectiveness of the American public library.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Ono, and Randlett).

AGENDA ITEM NO. 6. CITY LIBRARIAN'S REPORT

Luis Herrera, City Librarian, said Alice Chan, the Visitacion Valley Branch Manager will give a brief overview of this wonderful community and the services offered at the library.

Alice Chan, Visitacion Valley Branch Manager, said there are about 41,000 residents in the Visitacion Valley community. She said 57% of the population is Asian, 21% Latino Hispanic, 16% Caucasian and 10% African American and only 31% only speak English at home. She said the new library opened on July 30, 2011 with a wonderful opening party. She said the branch is open six days a week Monday through Saturday with an average of 630 visitors per day. She said the staff is multilingual and has a multilingual collection. She said the branch has 17 public computers. She said the community room is very well used by many of the community organizations. She said circulation to date as gone up 54% compared to the circulation the same time last year. She said the library holds new programming including multilingual story times and has developed strong partnerships with community organizations and schools. She said the library is here to serve the community and they receive a lot of support from the community.

Luis Herrera, City Librarian, said the Bernal Heights Branch Library Art Project has been presented to the Visual Arts Committee and the Arts Commission with suggestions for modifications and it is now making its way back to the Visual Arts Committee for further review. He said they are looking at a timeline of executing the project next spring. He said there is a letter in the packets from the Executive Director of the Ethics

Commission, John St. Croix, dismissing the matter relating to the 150-word statements in the minutes.

Public Comment

An anonymous citizen said the credit and thanks for this new library belongs to the Visitacion Valley neighborhood itself. He said at every juncture this neighborhood resisted being short changed for a library here and finally they succeeded in getting a new building. He said the statement that the Ethics Commission has dismissed the complaint is not accurate and only the Executive Director has done so. He said both the Civil Grand Jury and the Board of Supervisors have both said that is not adequate and there should be hearings before the full Ethics Commission. He said the Executive Director did say that the Ethics Commission could have put this on their agenda and they didn't, but he said he does not think that is adequate. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the previous speaker has pointed out some very significant aspects related to the report. He said there was a long process in which this neighborhood fought to get an adequate library which has had a very good outcome. He said the Ethics Commission has only once considered a referral from the Sunshine Task Force which involved your President shouting down a member of the public. He said the Ethics Commission recommended that that Commissioner be sacked. He said the Ethics Commission has been faulted for not hearing referrals from the Sunshine Task Force. He said the Art Commission has not seriously taken up consideration on the Bernal Heights Branch Library art project.

Ray Hartz, Director San Francisco Open Government, said one of his favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." He said Mr. Herrera's selective presentation of documents shows again his primary focus as a truly political creature. He includes letters from the Ethics Commission, dismissing a complaint while excluding any documentation related to the two findings by the Sunshine Ordinance Task Force which found the defendants in violation of the Ordinance. He said the letter from the Ethics Commission is simply a pro forma dismissal by their Executive Director. He said the Civil Grand Jury report found the Ethics Commission had dismissed every case sent them. He said he has tried to exercise his rights. He said the Commission ignores his civil rights and the rights of others. (See Addendum for a summary of this comment submitted by the speaker.)

Commission Discussion

Commissioner Breyer asked about the change in printers in the library.

Luis Herrera, City Librarian, said there is a new contract for printers with a lot of new equipment and like any new initiative it will take a considerable amount of time to roll out.

Kathy Lawhun, Chief of Main, said before the printers were installed 200 people were trained on them. She said we now have technicians going around to each branch to further train staff.

Jill Bourne, Deputy City Librarian, said there is a learning curve for the new equipment.

Commissioner Kane said he is interested in what issues if any there are at the new branch.

Linda Brooks-Burton, South East District Manager, said that Alice Chan the Visitation Valley Branch Manager is doing a wonderful job and doing a lot of outreach to the community.

Luis Herrera, City Librarian, said there are some minor punch list items that need to be worked out for the branch.

AGENDA ITEM NO. 7 APPROVAL OF THE MINUTES OF JULY 21, 2011

Public Comment

An anonymous citizen said he hopes the Commission remembers that there has been public comment on these minutes before on September 1. He said it would have been more satisfactory if your secretary had explained this but Commissioner Kane had continued these minutes so changes could be made. He said not a single change was made. He said all of the flaws are still there. He said the unfavorable comments were buried time after time. He said on page 4 Mr. Hartz never said the mural was sexist and the minutes are putting words in his mouth. He said comments from Commissioner Nguyen on page 12 do not include his comment about an illegal meeting. He said his comments on page 11 were not reported accurately. And his comments in general public comment about your failure to clean your own house have been ignored. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said he would like to postpone the approval of the minutes because he went to the library today and had problems watching the DVD because it would stop and start again. He said it was not possible to do a thorough review. He said these minutes have a number of problems regarding several very important issues. He said on page 1 the anonymous citizen's comments were not complete. He said his comments included that it was important to report that Sue Cauthen's comments had been denied during public comment. He said Mr. Hartz's comments regarding the Bay Area Reporter were not reported

accurately. He said his remarks about the Bernal Artwork were not complete.

Ray Hartz, Director San Francisco Open Government, said one of his favorite authors, Frank Herbert, wrote the following "Politics is the art of appearing candid and completely open, while concealing as much as possible." He said approval of these minutes in their current form is an additional violation of prior rulings of the Sunshine Ordinance Task Force (SOTF). He said the SOTF is by law the body which decides what the Ordinance means. He said he can think of no other description of the City Librarian and Commission's conduct as cowardly. He said to evade the responsibilities under law and then to send the Commission Secretary to answer for your decisions is nothing short of cowardice. He said when someone doesn't take the effort to obey the law and the person who has pressed these allegations they are taken to task for being uncivil. He said the Constitution guarantees his right to free speech. He said we have laws that are not followed. (See Addendum for a summary of this comment submitted by the speaker.)

Motion: By Commissioner Kane, seconded by Commissioner Munson to approve the Minutes of July 21, 2011.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Ono, and Randlett).

AGENDA ITEM NO. 8 APPROVAL OF THE MINUTES OF AUGUST 18, 2011

These Minutes have been trailed to the next meeting.

AGENDA ITEM NO. 9. ADJOURNMENT

Public Comment

An anonymous citizen said he would like to recommend that the Commission adjourn in honor of the passing of Edeltraut Raith a career librarian who died on July 30, 2011 at the age of 92. He said he remembers her from the late 70's and early 80's when she was involved with some of the controversies surrounding the Children's Librarian and he does not remember when she retired. He said she was one of those people who gave her entire working life to this library.

Peter Warfield, Library Users Association, said he would second the anonymous citizen's recommendation to adjourn in honor of Edeltraut Raith. He said once again this meeting will be adjourning without discussing new business and that should be included on your agenda.

Motion: By Commissioner Munson, seconded by Commissioner Kane to adjourn the regular meeting of October 6, 2011.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Ono and Randlett).

The meeting adjourned at 7:30 pm.

Sue Blackman
Commission Secretary

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6th floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <http://sfpl.org>. Additional materials not listed as explanatory documents on this agenda, if any, that are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

ADDENDUM

These summary statements are provided by the speaker: Their contents are neither generated by, nor subject to approval or verification of accuracy by, the San Francisco Public Library Commission.

Item 1: General Public Comment

Anonymous Citizen: Stop the Hate & Ignorance – Don't give or accept money from the Friends & Foundation

The Ethics Commission found your president guilty of conduct "below the standard of decency" and recommended her removal from office.

A germane NY Times article describing the world-wide contempt for the political class contained the quotation, "The political system has abandoned its citizens. We have lost a sense of responsibility for one another."

The Library Commission feels that the idea that they should be constrained by ethical and moral considerations is just preposterous and the lies are incredible. You will claim that water doesn't run downhill, then laugh at our powerlessness to claim the truth.

As far as you are concerned, you are only dispossessing the dispossessed, but it is done to the entire society.

The reason for this dishonesty is the network of self-serving interests you call the "Friend of the Library" Family.

The Visitacion Valley Neighborhood knows it.

Ray Hartz, Director San Francisco Open Government: One of my favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." I believe the members of the Library Commission and its Secretary, Sue Blackman, are truly political creatures as opposed to public servants. I also believe that City Librarian, Luis Herrera, is first and foremost a true politician in that his overall actions are those of someone "appearing candid and completely open, while concealing as much as possible." This is clearly shown, first and foremost, in his repeated attempts to restrict public access to public records which relate to the finances of the Friends of the San Francisco Public Library. No one tries so hard to hide something unless there is truly something to hide!

Item 2: Statement of Incompatible Activities (SIA)

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

While informing an Ethics Commission meeting of your malfeasance, your library administration appeared to request changes to its Incompatible Activities policy never approved by you.

On July 15, 2004, this Commission approved a policy that was never rescinded, yet that policy is not listed with your other policies, and the version before the Ethics Commission is on the City Librarian's web page.

The Assistant City Librarian explained both that the 2004 policy had insufficient input from the Library Staff and too much from the public, apparently not exclusive enough, and also that the present Library Commissioners are all new.

Since I was there, the Assistant City Librarian was obliged to tell the Ethics Commission that it would come before you.

Many issues, including a private digitization project, have been concealed and I am shocked that the Library Commission has been bypassed.

Item 3: Branch Library Improvement Program (BLIP) Budget Transfers to BLIP Program Reserve and Program Management Budget

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

Would I be able to make sense of this if I had access to the graphics? Apparently, the Administration can't.

It would have been interesting to explain the recent transfers from the Visitation Valley Infrastructure Fund here in Visitation Valley.

We are told that management was funded through the end of 2012, and now we need three-quarters of a Million for the same period.

One would assume that if we suddenly discovered 3/4 of \$Million that we didn't know we had as recently as six weeks ago, we could find public services for that money.

By the presentation's own terms, we are putting money into management we thought was funded through the end of 2012. As we come to the end of the program, management should be where we are saving money, not where we are increasing it.

Item 4: Bond Program Manager's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

I think I can be brief. I don't think it is such an occasion for completing 22 branches when it is so far behind schedule and that delay has caused enormous problems. I am sure you remind yourselves constantly of what a blessing the collapse of the economy has been, because if the economy had not collapsed, the BLIP certainly would have with the egregious cost overruns in good times. There is a saying about dark clouds having silver linings.

I finally saw myself in one of the crowd shots. Not as big of a thrill as I thought it would be. Perhaps when I was younger.

I was at the Ortega opening. It was a gorgeous day and many young people were excited about the opening of the playground at the same time.

Item 5: General Statement on Privatization of Libraries

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

Speaking for myself and the members of the public who have attended this meeting over many years, we have always been a force for respect and civility and

demanded equal treatment and not gotten it. If you want to change that, the ball is in your court.

Since your City Librarian has not given you any background let me do so. Assembly Bill 438 was sent to the Governor on September 22, and my understanding is that he has 30 days to either sign or veto it, or it becomes law without signature.

The Supervisors have continued an endorsement of this bill.

I detect the hand of the Librarian's Guild in the phrase "the life of the public commons" in recognition that democracy depends on a shared commons and the library belongs not to the philanthropists, but to us all.

Ray Hartz, Director of San Francisco Open Government: One of my favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." In this draft statement, the Library Commission says that they "affirm the independence, freedom and effectiveness of the American public library." Sounds good but, unfortunately it does not hold true when a citizen of the City and County of San Francisco wants to access public records. There the word "freedom" is conveniently disregarded. This is especially true if anyone attempts to understand the relationship between the Library and the Friends of the Library. In particular, how millions of dollars are raised each year and how those funds are expended. And, I guess, if I were the City Librarian, I would not want anyone looking at the annual City Librarians Discretionary Fund, in which the Friends provide him amounts in excess of \$35,000 per year.

Item 6: City Librarian's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

I don't have time to go through the entire history, but the credit for this new branch belongs to the neighborhood itself. At every juncture the neighbors resisted being shortchanged on this branch and finally forced the construction of the full-scale project.

The statewide bond had scenarios for funding levels that put Visitacion Valley at the end, and still the administration tried to save money here and the neighborhood resisted strenuously.

You claim that the Ethics Commission has dismissed the complaint against you, when in fact only the Executive Director has done so. Both the Civil Grand Jury and the Board of Supervisors have both gone on record as stating that is inadequate and there should be hearings before the full Ethics Commission. The fine print is that dismissal was endorsed by omission, but that is clearly insufficient.

Ray Hartz, Director San Francisco Open Government: One of my favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." The City Librarian's Report, particularly Mr. Herrera's selective presentation of documentation, shows again his primary focus as a truly political creature. He includes letters from the Ethics Commission, dismissing a complaint while excluding any mention, let alone documentation, related to two findings by the Sunshine Ordinance Task Force: #10054 against the Library Commission and #11054 against the City Librarian. Both of these decisions found the defendants in violation of the Sunshine Ordinance. The letters presented from the Ethics Commission is simply a pro forma dismissal by their Executive Director. The recent Civil Grand Jury report found the Ethics Commission had dismissed every case sent them, stating: "None of these cases were ever heard at an open hearing before the Ethics Commission."

Item 7: Approval of the Minutes (July 21, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends & Foundation.

I hope you are having a moment of déjà vu. We made public comment on these minutes on September 1. It would have been more satisfactory if your secretary had explained this, but Commissioner Kane continued these minutes so that changes could be made. Not a single change was made. All of the flaws that we pointed out at that time are still there.

I can go through them again so you can ignore me again.

Mr. Hartz on Page 4 never said the mural was sexist and you are putting words in his mouth.

Page 12 references a question from Commissioner Nguyen where he admitted an illegal meeting and that has been ignored.

My comments in general public comment about your failure to clean your own house: All are ignored for the second time around – déjà vu.

Ray Hartz, Director San Francisco Open Government: One of my favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." Approval of these minutes, in their current form is an additional violation of prior rulings of the Sunshine Ordinance Task Force #10054 and #11054, finding that 150 word summaries must be included in the body of the minutes. The SOTF is, by law, the body which decides what the Ordinance means. I can honestly think of no other description of the Library Commission and the City Librarians behaviors than to describe them as cowardly. To evade your responsibilities under law and then send the Commission Secretary to answer for your decisions is nothing short of cowardice. It is simply a device being used to evade your responsibilities under the law. If you can't win a fair fight, you simply chose to not fight fairly.

Item 9: Adjournment

Anonymous Citizen: I would like to recommend that we adjourn in honor of one of our career librarians, Edeltraut Raith. She actually passed away on July 30, but her obituary did not appear until September 16. She was born in 1919 and was 92 when she passed away. I remember her from the late 70's and early 80's when she was involved in the Children's Department controversies. She was educated at UC Berkeley and got her library degree at USC. She was one of those people who gave her entire working life to this library.



San Francisco Public Library

SAN FRANCISCO PUBLIC LIBRARY COMMISSION

Minutes of the Regular Meeting of November 3, 2011

(As amended and approved at the regular Commission meeting on December 1, 2011)

The San Francisco Public Library Commission held a regular meeting on Thursday, November 3, 2011, in the Koret Auditorium, Main Library.

The meeting was called to order at 4:41 pm.

Commissioners present: Breyer, Gomez, Munson and Randlett

Commissioner excused: Ono

Commissioners Kane and Nguyen arrived at 4:45 pm.

AGENDA ITEM NO. 1 PUBLIC COMMENT

An anonymous citizen said at the last meeting a Commissioner endorsed civility and decorum. He said he often refers to "Le mot de Coulter" which is the tip of the iceberg of vile stuff that he hopes you can barely imagine, including laughing while we are serious. He said the "barriers to the truth" is what is truly harmful. He said never mind the "public comment fund" to which your president contributes. He said if the Friends were not such thieves you would not need to be so aggressive to protect them from accountability. He said the Ethics Commission found against your president and you could have supported the standard of decency, irrespective of persons, but you did the opposite. He said basic reason and decency is reserved exclusively for the donors. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Executive Director, Library Users Association, said he hopes the people in the room are listening to what the public has to say because it affects the library in a number of ways. He said when you look up an item in the catalog sometimes you get additional information but sometimes you get additional information that is not available. He said the back button does not work in the catalog. He said the printing and copying machines are an atrocity and the branch librarian could not help

him with the copying. He said the Bernal Branch library mural community process was appallingly bad and closed.

Ray Hartz, Director San Francisco Open Government, said during the October, 2011 meeting the staff identified just under \$750,000 in savings and at the same time immediately identified a need for just over \$750,000 in additional needed expenditures. He said the Commission had questions and received only vague answers and when the Commission asked about delaying the action they were warned of dire consequences if just over \$500,000 wasn't immediately transferred. He said the Commission when ordered to jump paused only long enough to ask "how high"? He said the additional funds were authorized and, typical of many similar situations in the Commission's past will probably never be mentioned again. He said he has a funny feeling the Commission has seriatim meetings and discusses things before the meetings. He said he recently asked for assistance and was not given any and it is clear that information has been withheld. (See Addendum for a summary of this comment submitted by the speaker.)

AGENDA ITEM NO. 2. COUNCIL OF NEIGHBORHOOD LIBRARIES (CNL) REPORT

Laura Bernabei said she is the Ingleside Branch representative for the Council of Neighborhood Libraries (CNL). She asked that other members of the CNL in the audience please rise and be recognized. She said CNL is a group of volunteers from each of the branch libraries. She said there are one or two members from each branch. She said members are recommended by branch librarians and appointed by the Chief of Branches. She said we have 39 members at this time representing 27 branches. She said the CNL mission is: "In order to create a public library system that best meets the needs of San Franciscans, the CNL promotes dialogue among and between Branch Libraries, San Francisco neighborhoods, and library and City decision-makers by promoting public awareness about the library system and its services; identifying and championing branch needs and working to resolve issues; and acting as a conduit for neighborhood input." She said CNL meets once a month and the Chief of Branches chairs the meeting. At the meetings we discuss any new topics that we need to work on and learn new things about the library. We also get to share with each other what is happening at the different branches. She said Sue Blackman also attends the meetings representing the Commission and lets us know what happens at the Commission meetings.

Ellen Egbert, represents the Bernal Branch at CNL, said one of the major issues has been the Branch Library Improvement Program (BLIP). She said even before BLIP many of the members were working hard to collect signatures to get the initiative on the ballot. She said Luis Herrera has been with us through every single branch opening and we appreciate his efforts. She said CNL has been very active in the BLIP activities

attending all community meetings and they have attempted to mediate when issues have arisen. She said they have participated in fundraising efforts for the branches. She said CNL members participate in closing and opening parties. She said one CNL member participates in the Furniture, Fixture and Equipments meetings for the branches. She said with the branch managers CNL members have helped to design brochures for the branches. She said just before the opening CNL members help out with the pizza party for all the staff involved in the opening and Luis graciously thanks everyone involved. She said CNL members have devised a lessons learned checklist for post occupancy evaluation. She said all of us at CNL are proud to have been part of the BLIP program and are proud to say 22 down and only 2 to go.

Harriet Solis said she represents the Merced branch at CNL. She said basically CNL provides basic support for the libraries. She said elected official outreach is one of our official tasks. She said during election periods they make sure those running for office know how important the libraries are to the communities. She said they attend other community events, attend Library Commission meetings, do new member recruitment and have a Steering Committee that meets once a month with Luis and the Chief of Branches.

Public Comment

An anonymous citizen said he is gratified to see some members of the Council of Neighborhood Libraries and he hopes they will continue to come to the Commission meetings. He said the CNL has been a source of people who support not only the library, but San Francisco and Democracy in general. He said he hopes they will follow in the footsteps of their former members who got active and serious about the library system, and were hungry for more than pizza. (See Addendum for a summary of this comment submitted by the speaker.)

Ray Hartz, Director, San Francisco Open Government, said this item is agendized in a way that makes it impossible for members of the public to understand the content. He said there is no meaningful description and no explanatory documents are supplied. He said the Sunshine Ordinance states "a description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend or seek more information on the item." He said the Library Commission seems intent on suppressing public comment and he wonders if this is done with the intent of suppressing public attendance. He said the public won't know to attend if they don't know their interests are affected by the item. He said the Commission treats the public like mushrooms by keeping them in the dark and feeding them BS. He said he appreciates the CNL, but those of us who choose to raise issues are treated poorly and intimidated. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Director Library Users Association, said it is nice to have people come who do support libraries. He said it would be nice to do some joint projects together. He said the CNL may not know but the administration came to the Commission with a proposal of a cut to the book budget. He said thanks to the Library Users Association's efforts the plan was ultimately rejected by this Commission so that there was no cut to the book budget. He said he has been trying to understand what has been going on with the Bernal Branch and the artwork project and if there is a calendar about the history of Bernal it seems like the Branch would have access to it.

Commission Discussion

President Gomez thanked the members from the CNL.

Commissioner Kane said the Commission appreciates the work of the CNL.

Commission Nguyen said he would like some background on the history of the CNL.

Ellen Egbert, member CNL, said CNL began prior to the opening of the new Main. She said the branches were in trouble and with the assistance of the Chief of Branches the group was formed. She said they report to the Commission about once a year.

Luis Herrera, City Librarian, said the group came about at a grass roots level due to fiscal issues and lack of attention to the branches. He said their leadership has helped on many issues.

Commissioner Breyer said he is interested in how the CNL is engaging in the neighborhood.

Ellen Egbert said CNL members are all part of the communities they represent and they share information with the community and ask for input from the community.

Commissioner Randlett said CNL's work is invaluable and she thanked them for acknowledging the work of the City Librarian because he does do a lot of good work and deserves recognition. She said the Commission admires the work that CNL does.

AGENDA ITEM NO. 3. CITY LIBRARIAN'S REPORT

Luis Herrera, City Librarian, said he wanted to make a couple announcements on some key positions that will round out his Management Team. He said Edward Melton is the new Chief of Branches. He said Edward comes to us from the Houston Public Library where he oversaw 10 library locations and oversaw their mobile technology lab. He said Edward was responsible for managing and planning the new technology libraries in Houston. He said he wanted to

thank Martha Neves for the work she has done as interim Chief of Branches. He said the second appointment is Toni Cordova as Chief of Communications, Programs and Partnerships. He said she comes to us from Tucson, Arizona with over 25 years of experience in communications and public relations primarily in the area of public education and the non-profit and business sectors. He said most recently she was Director of Government and Community Relations for a school district in El Paso, Texas and prior to that she was the Chief of Staff for the Tucson Unified School District, the second largest public school district in Arizona. He said Toni has led key initiatives to position the districts as key partners in their respective communities through engaging diverse communities. He said he would like to ask to table the Controller's 2011 City Survey and a discussion can take place at a future meeting. He said with the support of the Commission, the Library has continued to identify new and innovative ways of serving our communities. He said prior to today there have been updates on earlier digitization efforts including laptop lending, website enhancements and e-book collections. He said topics to be discussed at this meeting include: upgrades to public wireless access in SFPL facilities; enhancements to patron email notices; and progress on digitization projects that are creating greater public access to San Francisco documents, San Francisco History Room materials, and unique analog video collections.

Brian Bannon, Chief Information Officer, gave a presentation on the Wi-Fi upgrades.

Michelle Jeffers, Public Information Officer, explained the new email notifications and showed the difference between the old email notifications and the new notifications which highlight upcoming activities at the library.

Christina Moretta, Photo Curator, and Trent Garcia, Electronic/Digital Services Librarian gave a presentation on a pilot program called Analog to Digital. She said the Library has received a California State Library Services and Technology Act (LSTA) grant. She said the library has digitized 2,395 minutes of analog audio visual material. She said the material will be accessible via the SFPL website. Trent Garcia said the next steps will be public access, cataloging and preservation.

Susan Goldstein, City Archivist, said she is co-managing a program with Kate Wingerson who helped to put this presentation together. She said the grant provided One Scribe machine and one IA scanner on-site at each location. She said a second machine is run by volunteers, with IA staff training and oversight. She said the priorities for scanning are things that are unique, local, fragile, non-circulating and copyright-free. She said this includes government documents, local history, and city directories. She said 2019 items have been scanned that have had 321,894 hits on the Internet Archive site. She said these books are used all the time. She said they are doing partnerships with other organizations. She said they are looking at sustainability beyond the one year of the grant.

Christina Moretta said they have developed a partnership with Dan Vanderkam who geocoded 13,257 images. She said this resulted in a website www.oldsf.org where specific sites can be clicked on and historical photos and information will appear.

Toni Bernardi, Chief of Children and Youth Services gave an update on some major programs. She said on October 6, 2011 the library participated in Read for the Record with 46 library programs and 2,030 attendees. She said the Tricycle Music Fest West had 7,208 attendees with 2 Main Stages and 6 branch concerts. She said this morning there was an event in the Children's Center with 186 Fifth Graders celebrating mythology. She said on Saturday, November 12, Chris Van Allsburg and Lemony Snicket will be in discussion from 2:00 – 4:00 pm.

Michelle Jeffers, Public Information Officer, said last night the library hosted Mary Roach in conversation with Adam Savage as part of the Library's One City One Book. She said as part of the American Sabor exhibit, this Saturday will be a teen Latin dance showcase at 2:00 pm in the Koret Auditorium. She said the Marjorie G. and Carl W. Stern Book Arts & Special Collections Center annual holiday lecture will be held Saturday, December 10 at 2:00 pm. She said on January 18, 2012 at 6 pm Richard Bolles will be holding a program celebrating the 40th anniversary of "What Color is Your Parachute."

Public Comment

An anonymous citizen said over the years he has become the institutional memory, and he said he assumes that if you wanted to know the history you would ask him. He said welcome to the new staff members. He said the e-mail overdue notice looks like a generic junk mail and not something personal and important to the patron. He said he hopes some of the images from the PowerPoint on the Digital Services Strategy do not indicate its user-friendliness. He said the first sentence from the explanatory document is ungrammatical gobbledygook. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Executive Director, Library Users Association, said he is glad to see programs mentioned that include books and reading. He said regarding the Wi-Fi update there is no mention about the potential health risks. He is particularly worried about those that work in the library and with the patrons. He said the e-mail notification does not show at the top of the e-mail what type of notification it is. He said the disastrous installation of the copier machines was apparently installed without any input from the patrons of the library.

Ray Hartz, Director of San Francisco Open Government, said there is no denying that we have a marvelous resource in our public libraries and our staff that works in them. He said it is out of concern of that institution that I and the other speakers do what we do. He said if there are soft ball questions staff will come back with answers but when there are questions about the money those responses are evasive. He said he has not heard

what has happened to the paper notices. He said historical preservation was important in what was presented but the history of the Bernal Branch has not been preserved. He said when the mural goes down at the branch there will be a loss of history and he hopes that the library will somehow maintain that history.

Commission Discussion

Commissioner Kane asked if there were plans to digitize newspapers.

Susan Goldstein, City Archivist, said there are copyright issues and it is very difficult to digitize newspapers.

Commissioner Kane said a lot more people would be interested in newspapers than some of the other things mentioned. He said he is glad it is funded for another year. He said on Digital Strategy he would like to see a report at least once a quarter and he would like to see a report on long term strategy. He said books are changing fast. He said he is happy we have the new Chiefs on board. He asked about the search that was done.

Luis Herrera, City Librarian, said the searches were all done nationwide through a recruitment firm and it included internal and external candidates. He said there will be more updates on the Digital Strategy. He said they will be looking for additional money to digitize newspapers.

Commissioner Breyer asked about the limits on use for Wi-Fi. He asked if a computer is available can a user use it for longer than an hour.

Brian Bannon, Chief Information Officer, said the Wi-Fi is available 24-7 and he said the loaner laptops are wireless. He said laptops are subject to the same requirements as are the desktop computers.

Commissioner Breyer said he appreciates the updates. He asked about the rollout for the new printers.

Luis Herrera, City Librarian, said any major change in equipment will have some bumps in the road so they are working closely with the supplier to work out the kinks.

Commissioner Nguyen said he is very excited about the oldsf website. He said he also wanted to follow up on the health issues related to wireless. He asked if the library had any additional information related to this.

Brian Bannon said there have been no substantive changes to Wi-Fi other than upgrading it. He said he does not have any additional research on the health issues.

Commissioner Kane said the work Dan Vanderkam did on the geocoding was amazing and the library owes him a huge thank you for that work.

President Gomez thanked staff for a great report. Commissioner Randlett said she is extremely appreciative of the high quality hard work by the staff.

Luis Herrera said Susan Goldstein will be recognized as one of the Heroes by the California Historical Society in a couple of weeks.

AGENDA ITEM NO. 4. LABOR UNION REPORT

Cathy Bremer, Local 1021, said she was happy to report that Governor Brown signed AB 438 into law safeguarding against the privatization of libraries. He said the last meeting at the Visitacion Valley Branch was especially painful to survive the nasty comments that were being made by the public at the meeting. She said there was no civility last month. She said she understands about watchdogs, but there is such negativity on every topic three times that it is very tedious. She said she would like to hear comments from the public with an eye towards making things better.

Public Comment

Ray Hartz, Director San Francisco Open Government, said Voltaire said "I may not agree with what a man has to say but I will defend to the death his right to say it." He said bottom line is the union representative doesn't like our comments either. He said she is free to come up and say she doesn't like our comments just as the Commission is free to say that as well. He said the fact that you don't like our comments does not mean that they are not true. He said one of the reasons there is the desire to keep the 150 word statements out of the Minutes is the fact that you want to silence public comment. He said he is exercising his rights under the First Amendment. He said you would like to have meetings where the public is excluded. He said some comments make people uncomfortable but the bottom line is the Commission has a fiduciary responsibility and he sees the Commission do nothing.

Andrea Grimes, Special Collections Librarian, said there is a difference between disagreeing and being abusive and we have seen both of it and we are familiar with the abuse that took place 20 years ago. She said she believes it is time to move on and be productive and yes sometimes disagreeing. She said we need to hear from our public when they have important criticisms but on the other hand no staff member, no library administrator or Commissioner should have to endure verbal abuse. She said that is just not o.k. She said she would like to see the public agree and disagree but let's knock off the incivility.

An anonymous citizen said he realizes what has been going on for the last twenty years and that has been a fraction of his tenure. He said he knows what civility and decorum means and he has been an advocate for decent treatment at the Library Commission for more years than he cares to remember. He said the ball is in your court. He said you can't feel yourself pushed, you can only feel yourself pushing back. He said you

can't hide behind masks and propagate the kinds of dishonesty and abuse you have propagated then blame it on the citizens. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said he is very disappointed that we heard the report that we did. He said these are very long term and venerated members of the staff that have spoken. He said in 1996 and 1997 there was a lot of contention about a variety of things and he heard about the incivility by the public. He said he hasn't called anybody names or questioned anybody's motives. He said he has spoken about facts and two of your Commissioners followed up on two issues he raised at this meeting. He said the concerns he has brought up like the book budget and paper notices have also been addressed by the Commission.

Commission Discussion

Commissioner Breyer said he wanted to thank the labor representatives for keeping the Commission up to date on the legislative actions and said he and the Commission are very appreciative of the staff's work.

Commissioner Randlett thanked the labor representatives for their comments about the manner in which public comment takes place.

AGENDA ITEM NO. 5 2012 LIBRARY COMMISSION MEETING SCHEDULE

Sue Blackman, Library Commission Secretary, said the draft 2012 meeting schedule is similar to this past year. She said there will be four months with only one meeting: January, July, August, and December due to the holidays and the regular summer break.

Public Comment

An anonymous citizen said last year there were 22 scheduled meetings and this year's schedule only has 20. He said you need to look and see if this is a schedule that can be met. He said this year there have 18 scheduled meetings, five cancelled meetings and one was replaced by a special meeting so there have been 14 meetings. He listed the Commission's attendance records for those meetings. He said historically there were many more meetings. He said Commissioner Nguyen has testified to one Monday meeting, but we don't know how many more Monday meetings there have been. He said the public's business gets done here and you should have at least as many meetings as last year and the Commissioners should attend the meetings. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the attendance by the Commissioners has not been exemplary. He said former Mayor Newsom set what he considered attendance standards which he urges the Commissioners to look at. He said quite a number of the Commissioners fall below those attendance standards. He said if the public's comments

are not factual he would expect the Commissioners to address this. He said the meetings used to be at 5:30. Some other Commissions meet at 6:30 or 7. He said he would urge you to change the hour of the meetings to a later time such as 5:30.

Ray Hartz, Director San Francisco Open Government, said you need to consider what is going on here. He said he appreciates the anonymous citizen keeping track of the Commission attendance and it should be your responsibility not members of the public. He said as far as the criticism goes, he said dealing with this Commission is like dealing with a fort under siege. He said you sit behind the desks and we never get any response. He said people who damage institutions are typically not the people on the outside trying to get in they are the people on the inside trying to keep others out. He said how many members of the public bother to come to your meetings? He said people don't come to the meetings because they see the push back the Commission gives to public comment. He said everything comes down to your resistance to looking at the money.

Commissioner Discussion

Commissioner Munson said they had been asked in the past to change the date to a little later and they agreed to change it to 4:30. He said the Commissioners have a great deal of dedication and he does not appreciate it when members of the public make things personal.

Motion: By Commissioner Kane, seconded by Commissioner Munson to approve the 2012 Library Commission Schedule.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Nguyen and Randlett).

AGENDA ITEM NO. 6 APPROVAL OF THE MINUTES OF AUGUST 18, 2011

Public Comment

An anonymous citizen said his comment on the first page reflects his comments on the POE but omits the conclusions you were supposed to draw about the underlying reality and ridicule of the public. He said on page 3 his comments were not reflected accurately. He said on page 10 his comments about the labor union report do not include his comments about the blackmail of the Friends of the Library. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said his comments on page 1 are not reflected accurately and his point is not made in the description in the Minutes. He said in certain respect these Minutes are quite good, but just before item 4 on page 7 he said his comment on the Bond Program Manager's Report should read "money to be spent on the operation of the library and not on *construction*" not on structures as it currently reads.

Ray Hartz, Director San Francisco Open Government, said he has reviewed past minutes and has raised concerns about how he is being misrepresented and what he got was silence. He said when he asked the Commission to read the law about the 150 word summary being included in the minutes, you say you are following the City Attorney's advice, but the City Attorney has changed his advice in the past. He said when members of the public point out that there are inaccuracies what we get is ignored. He said the Sunshine Task Force has ruled twice against you and for me to keep my statements in the body of the minutes. He said you violate my free speech rights and then you are surprised when I get uncivil. (See Addendum for a summary of this comment submitted by the speaker.)

Commission Discussion

Commissioner Randlett said she did want to acknowledge that Mr. Warfield has been quite dignified and civil and she has not specifically directed comments towards him.

Commissioner Breyer said on page five under his comments the word costs should be added after "perception is that \$1.7 million is due to higher construction **costs**."

Motion: By Commissioner Breyer, seconded by Commissioner Munson to approve the Minutes of August 18, 2011 as amended with the correction by Commissioner Breyer to add the word costs on page 5.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Nguyen, and Randlett).

AGENDA ITEM NO. 7 APPROVAL OF THE MINUTES OF SEPTEMBER 1, 2011

An anonymous citizen said these minutes are so instructive of the various themes that have been addressed today. He said on page 3 his comments are not reflected accurately. He said the point he was making was that the public was defending itself because of its advocacy of open government. He said on the bottom of page 9 this is a situation where Mr. Hartz spoke for 3 minutes and 21 seconds. He said the summary only represents the first 52 seconds and ignores everything he said after that point.

Peter Warfield, Executive Director, Library Users Association, said the harshest social cut you can give someone is to ignore them. He said there is a range of ways that you express disapproval. He said in that respect when you ignore the public you are playing a very harsh cut against the public. When you ignore a request for a correction it makes it appear that he is wrong in what he is saying. He said on page 7 under public comment he is quoted as saying "he asked about how that

compares with the overall collection which he believes is around 200,000." He said there are more than 2 million books in the collection that last he saw and the titles are in the 700,000 range.

Ray Hartz, Executive Director San Francisco Open Government, said his interest is two things 1) that members of the public are allowed to speak and 2) members of the public are allowed to access public records, which are the property of the citizens of the City and County of San Francisco. He said he watches the abuse and ignoring of the members of the public by the Commission. He said he is just trying to do the right thing and he has the right to come up here and question the things that you do.

Commissioner Randlett left the meeting.

Commission Discussion

Commissioner Kane requested that the secretary check the tape for the number that was stated by Mr. Warfield on page 7 and correct that number if it is misrepresented.

Motion: By Commissioner Kane, seconded by Commissioner Munson to approve the Minutes of September 1, 2011 with the amendment to Mr. Warfield's comments on page 7 if needed.

Action: AYES 5-0: (Breyer, Gomez, Kane, Munson, and Nguyen).

AGENDA ITEM NO. 8. ADJOURNMENT

Public Comment

Peter Warfield, Library Users Association, said he does not recommend adjourning when the agenda does not include New Business as he has requested. He said that gives the Commission the opportunity to add items to future agendas.

Motion: By Commissioner Munson, seconded by Commissioner Breyer to adjourn the regular meeting of November 3, 2011.

Action: AYES 5-0: (Breyer, Gomez, Kane, Munson, and Nguyen).

The meeting adjourned at 6:58 pm.

Sue Blackman
Commission Secretary

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6th floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <http://sfpl.org>. Additional materials not listed as explanatory documents on this agenda, if any, that

are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

ADDENDUM

These summary statements are provided by the speaker: Their contents are neither generated by, nor subject to approval or verification of accuracy by, the San Francisco Public Library Commission.

Item 1: General Public Comment

Anonymous Citizen: Stop the Hate & Ignorance – Don't give or accept money from the Friends of the Library

A Library Commissioner endorsed civility and decorum, but did not clarify she was chastising your president, and thanking the citizens, so I will set the record straight.

"Le mot de Coulter" is the tip of the iceberg of vile stuff that I hope you can barely imagine, including laughing while we are serious. Barriers to the truth is the harm known in psychology as "psychic assault." Your president contributes to the "public comment fund."

This is how wealth maintains exclusive influence for themselves and disenfranchises the citizens. If the Friends were not such thieves you would not need to be so aggressive to protect them from accountability.

At the Ethics Commission, you could have supported the standard of decency, irrespective of persons, but you did the opposite. Basic reason and decency is reserved exclusively for the donors.

Ray Hartz, Executive Director San Francisco Open Government: During the October, 2011 meeting of the Library Commission, the Library Staff identified just under \$750,000 in savings for two completed branches in the BLIP program. Just in time, too! After identifying the savings, they immediately identified a need for just over \$750,000 in additional needed expenditures. Following very vague explanations for these needed amounts, the Commissioners asked questions and received only very vague answers. When mention was made about delaying the authorization until these questions were answered, representatives of the Library went into crisis mode and warned of dire consequences if just over \$500,000 wasn't immediately transferred. Typical of their usual handling of things placed before them: the Library Commission, when ordered to "JUMP!" paused only long enough to ask: "HOW HIGH?" The additional funds were authorized and, typical of many similar situations in the Commission's past, will probably never be mentioned again!

Item 2: Council of Neighborhood Libraries (CNL) Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends of the Library

I am glad to see members of the Council of Neighborhood Libraries and I hope they will continue to come.

The Council has been a source of people who support not only the library, but San Francisco and Democracy in general. I hope they will see the need to continue to come to Library Commission meetings not just when they are invited.

I hope they will follow in the footsteps of their former members who got active and serious about the library system, and were hungry for more than pizza.

Ray Hartz, Executive Director San Francisco Open Government: This item is agendized in a way that makes it impossible for members of the public to understand the content. There is no "meaningful description" and no "explanatory documents" are supplied. The Sunshine Ordinance states: "Sec. 67.7(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend or seek more information on the item." As the Library Commission seems intent on suppressing public comment, particularly "meaningful" public comment, I don't think it unfair to "wonder aloud" if this is done with the intent of suppressing public attendance. After all, the public won't know to attend if they don't know if their "interests are affected by the item." The Library Commission treats the Public like mushrooms: keep them in the dark and feed them B.S.

Item 3: City Librarian's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends of the Library

Over the years I have become the institutional memory, and I assume that if you wanted to know the history, you would ask me.

Welcome to the new staff members and I hope they have been warned what they are getting into.

Thanks to the City Librarian for giving us a warning of the Controller's report.

The e-mail overdue notice looks like a generic junk mail and not something personal and important to the patron.

I don't want to be too critical of the digitization project because it is a work in progress, but I hope the PowerPoint does not indicate its user-friendliness.

The first sentence from the explanatory document includes "to ensuring" which must be a difficult error for a native speaker to make. We all recognize this as ungrammatical gobbledegook.

Item 4: Labor Union Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends of the Library

Twenty years has been a fraction of my tenure. I know what civility means. I have been an advocate for decent treatment at the Library Commission for more years than I care to remember, in some cases, before you were born.

The staff should remind you of what the citizens have endured. I said before, the ball was in your court and I have had no response. You can only feel yourselves pushing back.

There are commissions and public bodies in this city that have supportive relationships with their public. If you want to know why that is not true before the Library Commission maybe you need to examine your own consciences.

You can't hide behind masks and propagate the kinds of dishonesty and abuse you have propagated and then blame it on the citizens.

Item 5: 2012 Library Commission Meeting Schedule

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends of the Library

This year's schedule had 22 scheduled meetings and next year only 20.

So far there have been 18 scheduled meetings, five cancellations, one of which was replaced with a special meeting. So there have been 14 meetings.

President Gomez and Mr. Breyer have both perfect attendance and perfect punctuality.

Mr. Munson attended 13 meetings and late 3 times.

Ms. Ono attended 12 meetings and late once.

Mr. Kane attended 11 meeting and late 5 times.

Mr. Nguyen attended 9 meetings and late 5 times.

Ms. Randlett attended 7 meetings and late once.

Some commissioners have never been here for adjournment.

Historically there were many more meetings. Commissioner Nguyen has testified to one Monday meeting, but we don't know how many more Monday meetings there have been.

The public's business gets done here and you should have at least as many meetings as last year and come to them.

Item 6: Approval of the Minutes (August 18, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends of the Library.

I want to acknowledge, Le mot de Coulter; feels like old times.

The anonymous citizen's general public comment reviews the incident after the POE but omits the conclusions you were supposed to draw about the underlying reality and the ridicule of the public.

On page 3, the expectation the money would not go back was what your administration told the Capital Planning Committee and the "two betrayals" that were omitted, were betrayal of the purpose of the Library Preservation Fund and of public disclosure.

On page 10, after the phrase "if you don't take their deal of private fund-raising and private influence peddling" has no "then" clause, because that was about the blackmail of the Friends of the Library and you can't have that.

Item 7: Approval of the Minutes (September 1, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends of the Library.

These minutes reflect issues addressed today where meaning has been drained out or perverted.

On page 3, the point was that the public was being attacked for its defense of open government and the commentor was the chair of the Sunshine Task Force and an author of the Sunshine Bill of Rights. Mr. Munson robs us of this positive context, and the minutes rob us of it again.

So that this won't seem self-serving let us use Mr. Hartz as an example. On page 9, the summary, slightly garbled, reflects the first 52 seconds and then ignores everything said after that point. He had opinions and points to make, including the minutes containing viewpoint discrimination, Ms. Blackman carrying your water, and a dishonest discussion.

Parenthetically, the Ethics Commission didn't find me below the standard of decency.



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

Date: June 17, 2013

PAUL A. RENNE
VICE-CHAIRPERSON

To: Members, Ethics Commission

BENEDICT Y. HUR
COMMISSIONER

From: John St. Croix, Executive Director

AMIEENNE S. STUDLEY
COMMISSIONER

Re: **Show Cause Hearing – Ethics Complaint 02-130307**

JOHN ST. CROIX
EXECUTIVE DIRECTOR

On March 7, 2013, the Sunshine Ordinance Task Force ("Task Force") delivered a referral letter and an Order of Determination ("Order") to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance section 67.34 and 67.30(c). The named respondent was Kate Patterson of the Arts Commission. The named complainant was Peter Warfield of the Library Users Association. The referral stated that Respondent violated Sunshine Ordinance section 67.25(a) for failing to respond to an immediate disclosure request in a timely manner, section 67.26 for failing to keep withholding to a minimum, and section 67.34 for the willful failure to comply with the Order of Determination issued April 5, 2012. The matter was Sunshine complaint number 12001.

Pursuant to the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"), staff originally scheduled this matter to be heard at a Show Cause Hearing during the next Ethics Commission meeting of April 22, 2013. The matter was postponed to be heard at this meeting. Both Parties were notified of the original hearing date and of the postponed date.

According to the Order, the Task Force held a hearing on the matter on March 7, 2002 (presumably the Task Force meant 2012). Peter Warfield alleged that on December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office. On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the

Library Users Association that information had been redacted or provided justification for the redactions.

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment. The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without the same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

Although the Task Force included a finding that Ms. Patterson violated Sunshine Ordinance 67.27 in the Order dated April 5, 2012, it did not refer that violation to the Ethics Commission in the referral dated March 7, 2013. In addition, the Task Force referred this matter as a willful violation under section 67.34. However, Ms. Patterson is not an elected official or department head. Thus, this matter will be handled under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations")

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (See Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (See Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant are required to attend. However, if any party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter Four, section I.E, then the Commission may make a decision in the party's absence.

Each Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum.



SAN FRANCISCO ARTS COMMISSION

2013 APR -1 PM 3:40

FRANCISCO
ETHICS COMMISSION

EDWIN M. LEE
MAYOR

May 29, 2012

TOM DECAIGNY
DIRECTOR OF
CULTURAL AFFAIRS

RE: WRITTEN ORDER OF DETERMINATION OF APRIL 5, 2012 - LIBRARY USERS
ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO.12001)

Dear Honorable Members of the Sunshine Ordinance Task Force:

I am writing in response to the Written Order of Determination of April 5, 2012 in which the Sunshine Ordinance Task Force (SOTF) found the:

SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information... The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

While we acknowledged that our response to this Written Order of Determination was delayed, we are writing to reiterate our position that we acted appropriately by redacting the personal information of those individuals who filled out speaker cards at past commission meetings.

At the May 15, 2012 SOTF committee meeting, Ms. Patterson, acting as a representative for the San Francisco Arts Commission (SFAC), apologized to Mr. Warfield and the committee members for the agency's oversight in providing a written response to this order within in the required timeframe and failing to attend the Compliance and Amendments Committee meeting on April 17, 2012.

Herein lies the SFAC's official response to the Written Order of Determination of April 5, 2012 regarding the redaction of personal information from meeting speaker cards requested by Mr. Warfield on January 13, 2012.

In the SFAC's December 19, 2011 email response to Mr. Warfield's request for:

1. Filled-out speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).
2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

The SFAC explained that there were no speaker cards responsive to his request number 1, and we supplied pdf copies of speaker cards for the following meetings in response to his requests number 2:



CITY AND COUNTY OF
SAN FRANCISCO

Full Commission September 12, 2011
Full Commission November 16, 2011
Visual Arts Committee August 17, 2011
Visual Arts Committee October 19, 2011

We further explained that there were no cards for any of the other meetings he had requested, and that to protect the individuals' right to privacy under the California Constitution, Article 1, Section 1, we redacted the personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. We also provided Mr. Warfield with paper copies of the same documents.

At the SOTF meeting on March 7, 2012, Ms. Patterson testified that under the advice of the agency's City Attorney the SFAC acted appropriately in redacting the personal information of the individuals who filled out the speaker cards citing the individuals' right to privacy under the California Constitution, Article 1, Section 1.

The SOTF found the SFAC in violation as follows:

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

Today, despite the SOTF finding, the SFAC maintains that it acted appropriately by redacting the personal information of those who filled out speaker cards at past commission meetings, because at the time it was unclear to both the SFAC and the individuals in question that they would be waiving their Constitutional rights of privacy by participating in the Commission meeting by filling out residence information on a card.

At no point did the SFAC's speaker cards include information alerting the individual to the fact that once handed to the commission that his/her private information would be of public record. The SFAC has since modified its speaker cards so that it does not ask for one's personal address and it now includes a disclaimer that reads as follows: "You are not required to complete this card in order to make a public comment, and you may speak anonymously, if you wish."

Consistent with the federal and state constitutional provisions protecting the right of individuals to privacy, and consistent with the Sunshine Ordinance and Public Records Act, the Arts Commission properly withheld the private home address information of citizens who submitted public comment at the Arts Commission's meetings.

The "Findings and Purpose" section of the Sunshine Ordinance makes clear that the Sunshine Ordinance was not intended to eliminate or interfere with privacy rights. Specifically, Section 67.1(g) states that "[p]rivate entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected." S.F. Admin. Code 67.1(g). The Public Records Act, likewise, was adopted by the Legislature in the spirit of being "mindful of the right of individuals to privacy." Cal. Gov't Code Sec. 6250.

Section 6254(k) of the California Public Records Act permits an agency to decline to disclose "[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k). Article I, Section 1 of the California Constitution, in turn, protects a citizen's right to privacy and classifies such a right as an "inalienable" right. That provision states that "[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and **privacy**." (emphasis added). Cal. Const., Art. I, Sec. 1. In addition, the Public Records Act allows an agency to decline to disclose "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Cal. Gov't Code Sec. 6254(c). Thus, the Arts Commission, as a City agency, may not make disclosures that violate a citizen's right to privacy.

Courts have held one's residence and phone number to be private. In *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 494-501 (1994) ("*Dep't of Defense*"), the United States Supreme Court held that the home addresses of federal employees are exempt from disclosure to unions under the privacy exemption in the Freedom of Information Act (FOIA). The California Public Records Act is modeled on the FOIA and the judicial construction and legislative history of the federal act guide the interpretation of the California Act. *A.C.L.U. v. Deukmejian* 32 Cal3d 440, 447 (1982). The FOIA, like the Public Records Act, exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The Court found that employees have some "non-trivial privacy interest in nondisclosure" of their home address information and "in avoiding the influx of [unsolicited] union-related mail ... telephone calls or visits, that would follow disclosure." *Dep't of Defense*, 510 U.S. 487, 488. Accordingly, the Court was "reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions." *Id.* at 501. The Court found that the individual privacy interest in nondisclosure of home address information was "far from insignificant" especially "when we consider that other parties, such as commercial advertisers and solicitors, must have the same access" to such information under FOIA. *Id.*

Similarly, in *Sheet Metal Workers v. Dep't of Veteran Affairs*, the court found that workers hired to help renovate a veterans hospital had a significant privacy interest in the nondisclosure of their names and addresses. *Sheet Metal Workers v. Dep't of Veteran Affairs* 135 F.3d 891, 904 (3d Cir. 1998). The court stated that the "significant privacy concerns attached to the home and employees' interest in avoiding a barrage of unsolicited [mail, telephone or personal] contact weighs heavily in our consideration." *Id.* In a different context involving citizen complaints to a city about a municipal airport, the court also found that those citizens had significant privacy interests in their home addresses and telephone numbers and that public disclosure of such information would have a chilling effect on future complaints. *City of San Jose v. Superior Court*, 74 Cal.App.4th 1008, 88 Cal. Rptr. 2d 552, 555 (1999).

Although home addresses and telephone numbers are often publicly available through telephone directories or similar services, that fact does not eliminate an individual's privacy interest in such information. The Supreme Court has noted that the privacy interest encompasses an individual's control of information concerning his or her person and that "an individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." *Dep't of Defense*, 510 U.S. at 500.

Here, individuals who submitted private residence information on the old version of the Arts Commission's comment card for purposes of making public comment at an Arts Commission meeting have not surrendered their rights to privacy in providing such information. They should not be deemed to have waived their rights to privacy simply because they included their residence information on a public comment card. Indeed, members of the public may speak anonymously. Simply put, disclosing the private residence information of individual members of the public who attend or speak at the Arts Commission meetings neither sheds light on, nor enhances the public's understanding of, the operations of the Arts Commission. As we have previously explained, the Arts Commission has updated its comment cards to clarify that individuals may speak anonymously and that they are not required to complete a public comment card, or provide any specific identifying information, in order to make public comment.

In sum, where the disclosure of a record would violate a citizen's privacy rights, the Public Records Act and the Sunshine Ordinance do not require such disclosure.

Sincerely,

Kate Patterson
Public Relations Manager

cc: Director of Cultural Affairs Tom DeCaigay, Commission Secretary Sharon Page-Ritchie,
Peter Warfield

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

March 7, 2013

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Compliance and Amendments Committee recommendation for referral to the Ethics Commission in the case of the Library Users Association against the Arts Commission for failing to respond to the Immediate Disclosure Request for redacted speaker contact information.

(Sunshine Ordinance Complaint No. 12001, The Library Users Association v. the Arts Commission)

Dear Ethics Commission,

On March 7, 2012, the Task Force heard Complaint No. 12001, by the Library Users Association ("Complainant") against the San Francisco Arts Commission ("Respondent"). The Complaint alleged that Respondent had failed to provide un-redacted copies of speaker cards from the September 12, 2011 and November 16, 2011 Arts Commission meetings, as well as the August 17, 2011 and October 19, 2011 Visual Arts Committee meetings, in response to Complainant's December 15, 2011 Immediate Disclosure Request.

Peter Warfield represented Complainant during the hearing, while Kate Patterson represented Respondent. The information redacted by Respondent was personal contact information provided by speakers on speaker cards required to be filled out the Commission for all speakers on items on the agenda of the public meetings in question. At the conclusion of the hearing, the Task Force found Respondent in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond in a timely manner, 67.26 for failure to keep withholding to a minimum by providing un-redacted speaker cards, and 67.27 for failure to justify withholding the redacted information: and (2) to refer the matter to Compliance and Amendments Committee.

The Task Force issued an Order of Determination in this matter on April 5, 2012. The Order required that Respondent provide un-redacted speaker cards to Complainant within 5 days.

<http://www.sfgov.org/sunshine/>

On May 15, 2012 the Compliance and Amendments Committee heard Peter Warfield (Complainant) provide an update on an order of determination from the March 7, 2012 full SOTF meeting. The Respondent (Kate Patterson) provided an update and responded to questions. The committee moved to refer the matter back to the Task Force with a recommendation that it be forwarded to the Ethics Commission.

At the December 5, 2012 SOTF meeting the Task Force moved to refer the Arts Commission to the Ethics Commission for violating Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.34 for willful failure to comply with the Order of Determination.

The Task Force recommends the Ethics commission investigate the Arts Commission for their willful failure to provide the Library Users Association with redacted contact information on speaker cards.

This request and referral is made under Section 67.30 (c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this Ordinance or the Acts.

Thank you for your timely attention to this matter. A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination. Please contact the Sunshine Ordinance Task Force Administrator at sotf@sfgov.org or (415) 554-7724 with any questions or concerns.



Kitt Grant, Chair
Sunshine Ordinance Task Force



David Sims, Member Attorney
Sunshine Ordinance Task Force

Encl.

cc: Peter Warfield, Library Users Association, Complainant
Kate Patterson, Arts Commission, Respondent
Jerry Threet, Deputy City Attorney

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
April 5, 2012

DATE THE DECISION ISSUED
March 7, 2012

LIBRARY USERS ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO. 12001)

FACTS OF THE CASE

Complainant Library Users Association alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by improperly redacting contact information on speaker cards responsive to a public records immediate disclosure request made on December 15, 2011.

COMPLAINT FILED

On January 13, 2012, Peter Warfield of the Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the SFAC alleging violations of Sunshine Ordinance public records provisions.

HEARING ON THE COMPLAINT

On March 7, 2012, Peter Warfield appeared before the Task Force and presented the Library User Association's complaint. Respondent SFAC was represented by Public Information Officer Kate Patterson, who presented SFAC's response.

On December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office.

On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the Library Users Association that information had been redacted or provided justification for the redactions.

ORDER OF DETERMINATION

Ms. Patterson stated that the SFAC redacted personal contact information from the speaker cards to protect individuals' rights to privacy pursuant to the California Constitution, Article 1, Section 1. She explained that the City Attorney's Office has advised the SFAC to redact personal contact information. She further explained the SFAC does not want to risk being the subject of a lawsuit for releasing personal information provided by members of the public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

In addition, the Task Force found that the SFAC failed to provide the Library Users Association with justification for withholding information at the time the speaker cards were produced.

The Task Force also concluded that the SFAC would benefit the public by placing language on speaker cards that notifies members of the public they are not required to complete a speaker card to speak during a public meeting.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information.

The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Manneh)

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

ORDER OF DETERMINATION

Absent: 1 - Cauthen
Excused: 2 - Chan, Wolfe
Recused: 0



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant
Kate Patterson, Arts Commission, Respondent
Tom DeCaigny, Director of Cultural Affairs, Arts Commission
Jerry Threet, Deputy City Attorney



Date March 7, 2012Item No. 13 & 14File No. 12001**SUNSHINE ORDINANCE TASK FORCE****AGENDA PACKET CONTENTS LIST****ITEMS**

Complaint submittal

Respondent's Response

Correspondence

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Completed by: Andrea Ausberry Date March 1, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.



Sunshine Complaint
complaints

to:
soft
01/13/2012 08:58 AM
Hide Details
From: <complaints@sfgov.org>

To: <soft@sfgov.org>

To: soft@sfgov.org

Email: complaints@sfgov.org

DEPARTMENT: Arts Commission

CONTACTED:

PUBLIC_RECORDS_VIOLATION: Yes

PUBLIC_MEETING_VIOLATION: No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION: Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2- Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority.

HEARING: Yes

PRE-HEARING: No

DATE: 1/13/2012

NAME: Library Users Association

ADDRESS:

CITY:

ZIP:

PHONE: 753-2180

CONTACT_EMAIL: libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED: No



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

TOM DECAIGNY
DIRECTOR OF
CULTURAL AFFAIRS

PROGRAMS

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PUBLIC ART
STREET ARTISTS LICENSES

ARTS COMMISSION OFFICE
401 VAN NESS AVENUE
415.354.6080
415.354.6082

ADMINISTRATIVE SERVICES
MANAGEMENT SERVICES
MARKETING SERVICES

February 6, 2012

Honorable Members
Sunshine Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Re: Sunshine Complaint #12001
Library Users Association v. Arts Commission

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #12001, submitted on January 13, 2012 by Library Users Association, and received by our office on January 27, 2012.

The complaint says the following:

"Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2-Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority."

On December 15, 2011, Mr. Peter Warfield of Library Users Association submitted an e-mail request for the following:

"1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."



CITY AND COUNTY OF
SAN FRANCISCO

Sunshine Task Force re: Sunshine Complaint #12001
Library Users Association v. Arts Commission

February 6, 2012
Page 2

On December 19, 2011, I replied to his request by e-mail with the explanation that there were no speaker cards responsive to his request number 1, and I supplied pdf copies of speaker cards for the following meetings in response to his request number 2:

full Commission September 12, 2011
full Commission November 16, 2011
Visual Arts Committee August 17, 2011
Visual Arts Committee October 19, 2011

I further explained that there were no cards for any of the other meetings he had requested. To protect the individuals' right to privacy under the California Constitution, Article I, Section 1, I blocked out any personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. I also advised Mr. Warfield that paper copies of the same documents were at our front desk for him to pick up at his convenience.

For your convenience, we are enclosing a copy of the e-mail messages referred to above.

Finally, please be advised that the Arts Commission has revised the design of its speaker cards to remove the line for the speaker's address.

Very truly yours,

Sharon Page Ritchie
Commission Secretary

spr

cc: Tom DeCaigny, Director of Cultural Affairs

Encl: E-mail from Library Users Association, December 15, 2011 and reply from Sharon Page Ritchie, San Francisco Arts Commission, December 19, 2011

Page Ritchie, Sharon

From: Page_Ritchie, Sharon
Sent: Monday, December 19, 2011 11:37 AM
To: 'libraryusers2004@yahoo.com'; Beltran, JD
Cc: Krell, Rebekah
Subject: RE: Immediate Disclosure Request - Speaker Cards, additional dates
Attachments: September_12_2011_comment_cards.pdf; VAC Public Comment Cards Aug-Dec 2011.pdf; November_16_2011_comment_cards.pdf

In response to your request below, there are no speaker cards responsive to your request number 1 below.

In response to your request number 2 below, I am attaching copies of speaker cards for the following meetings:

full Commission September 12, 2011
 full Commission November 16, 2011
 Visual Arts Committee August 17, 2011
 Visual Arts Committee October 19, 2011

There are no speaker cards for any of the other meetings you have requested.

Hard copies of these cards are waiting for you at the front desk of the Arts Commission office. You may pick them up at your convenience during regular business hours.

In response to your voicemail this morning, requesting times to listen to recordings of meetings (copies of which have been supplied to you), available times are today, Monday, December 19 from 2:30 to 3:30, or tomorrow, Tuesday, December 20 from 2:30 to 3:30. Please let me know when you expect to come in.

Please note that the Arts Commission offices will be closed during the entire week of December 26 and the City holiday of Monday, January 2, 2012.

Sharon Page Ritchie
 Commission Secretary
 San Francisco Arts Commission
 415/252-2591

Website: <http://www.sfartscommission.org>
 e-newsletter: <http://sfartscommission.org/newsletter>
 Twitter: <http://www.twitter.com/SFAC>
 Facebook: <http://www.facebook.com/sfartscommission>
 YouTube: <http://www.youtube.com/ArtsCommission>
 Flickr: <http://www.flickr.com/photos/sfac>

From: Library Users Association [mailto:libraryusers2004@yahoo.com]
Sent: Thursday, December 15, 2011 3:48 PM
To: Beltran, JD
Cc: Page_Ritchie, Sharon
Subject: Immediate Disclosure Request - Speaker Cards, additional dates

Dear Ms. Beltran:

A. Library Users Association would like to inspect, at your offices, the following:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September.

October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

If there are no speaker cards for a particular date, please provide a blank speaker card for that date.

Please provide these on a rolling basis, if necessary.

B. We would also like to receive these electronically as well.

Please note that a few of the speaker card copies recently supplied for December 5 and 12, 2011 are difficult or impossible to read, so we would like to see the originals of those, as well as the ones above, at a future visit to the department.

Thank you for your attention to this.

Sincerely,

Peter Warfield
Executive Director
Library Users Association
415/753-2180

File No. 12001

SOTF Item No. _____

CAC Item No. 10

SUNSHINE ORDINANCE TASK FORCE **AGENDA PACKET CONTENTS LIST**

Sunshine Ordinance Task Force

Date: _____

Compliance and Amendments CommitteeDate: May 15, 2012**CAC/SOTF**
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Order of Determination

Memo

Complaint

Response

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Completed by: Andrea AusberryDate May 11, 2012

Completed by: _____

Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
 The complete document is in the file.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

April 5, 2012

DATE THE DECISION ISSUED

March 7, 2012

LIBRARY USERS ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO. 12001)

FACTS OF THE CASE

Complainant Library Users Association alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by improperly redacting contact information on speaker cards responsive to a public records immediate disclosure request made on December 15, 2011.

COMPLAINT FILED

On January 13, 2012, Peter Warfield of the Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the SFAC alleging violations of Sunshine Ordinance public records provisions.

HEARING ON THE COMPLAINT

On March 7, 2012, Peter Warfield appeared before the Task Force and presented the Library User Association's complaint. Respondent SFAC was represented by Public Information Officer Kate Patterson, who presented SFAC's response.

On December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office.

On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the Library Users Association that information had been redacted or provided justification for the redactions.

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

Ms. Patterson stated that the SFAC redacted personal contact information from the speaker cards to protect individuals' rights to privacy pursuant to the California Constitution, Article 1, Section 1. She explained that the City Attorney's Office has advised the SFAC to redact personal contact information. She further explained the SFAC does not want to risk being the subject of a lawsuit for releasing personal information provided by members of the public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

In addition, the Task Force found that the SFAC failed to provide the Library Users Association with justification for withholding information at the time the speaker cards were produced.

The Task Force also concluded that the SFAC would benefit the public by placing language on speaker cards that notifies members of the public they are not required to complete a speaker card to speak during a public meeting.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information.

The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Manneh)

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

Absent: 1 - Cauthen
Excused: 2 - Chan, Wolfe
Recused: 0



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant
Kate Patterson, Arts Commission, Respondent
Tom DeCaigny, Director of Cultural Affairs, Arts Commission
Jerry Threet, Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNS
Deputy City Attorney

Direct Dial: (415) 554-3970
Email: michael.karns@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Michael Karns
Deputy City Attorney
DATE: March 2, 2012
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

BACKGROUND

Complainant Library Users Association ("Complainant") alleges that the San Francisco Arts Commission ("Commission") failed to provide documents responsive to their December 15, 2011 public records request.

COMPLAINT

On January 13, 2012, Complainant filed this complaint against Commission, without specifying which provision of the Ordinance it believed had been violated.

JURISDICTION

Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against Commission. Commission does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.20(b) defines "public information".
- Section 67.21 governs responses to a public records request.
- Section 67.25 governs immediacy of response.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6252(e) defines "public record".
- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts

On December 15, 2011, Complainant sent a request for documents to Commission via email. Complainant's email is quoted, in relevant part, here:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, November of 2009 (two years ago).

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 2, 2012
PAGE: 2
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."

On December 19, 2011, Commission replied to this request via email with an explanation that speaker cards responsive to request #1, those from Arts Commission meetings and Visual Arts Committee meetings of September, October, and November 2009, did not exist. Commission also provided, at this time and over email, PDF copies of speaker cards from the September 12, 2011 and November 16, 2011 Arts Commission meetings, as well as speaker cards from the August 17, 2011 and October 19, 2011 Visual Arts Committee meetings, in response to Complainant's request #2. Commission also explained that no cards for any of the other meetings requested were in existence.

As part of Commission's response, Commission redacted certain information from the speaker cards before providing them to Complainant. Complainant alleges that no explanation was given for the redactions when the documents were produced.

On or about December 20, 2011, Complainant visited the Arts Commission offices to inspect the speaker cards in person. Complainant alleges that during this inspection, it realized that certain information had been redacted. Complainant alleges that when it asked for the reason for the redaction, only then was it informed that the speaker cards contained confidential personal address information. Specifically, Commission informed Complainant at that time that to protect the privacy interests of those who spoke at the meetings, personal address information for the speakers was redacted. Commission further informed Complainant that if the address information listed was a business address, it was not redacted. Complainant alleges that no explanation for the redactions was provided at the time the original response was made.

In its reply to Complainant's complaint to the Task Force, Commission does not dispute that certain personal address information was redacted from the speaker cards before they were provided to Complainant. Commission argues that such redaction is necessary "to protect the individuals' right to privacy under California Constitution, Article 1, Section 1." Commission also states in its reply to the Task Force that it has revised the design of its speaker cards to remove the line for the speakers address, thereby avoiding the necessity of redaction of this information in the future.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the nature and extent of the search the Department conducted with regard to documents responsive to Complainant's December 15, 2011 request?
- Did Commission's email response on December 19, 2011 contain any assertion that certain information had been redacted from the speaker cards?
- Did Commission's email response on December 19, 2011 contain any justification for why certain information on the cards had been redacted?

LEGAL ISSUES/LEGAL DETERMINATIONS:

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 2, 2012
PAGE: 3
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

- If the Commission's email response on December 19, 2011 did not contain any assertion of or justification for the redaction of certain information from the speaker cards, did this omission constitute a violation of §67.27 of the Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE

CHAIRMAN

TOM DECAIGNY

VICE CHAIRMAN
CULTURAL AFFAIRS

PROGRAMS

ETHEL ART COLLECTION
CIVIC DESIGN KIOSK
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PUBLIC ART
STREET ARTISTS ENCOURAGE

ARTS INFORMATION GALLERY
401 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

ARTS INFORMATION GALLERY
401 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

ARTS INFORMATION GALLERY
401 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

February 6, 2012

Honorable Members
Sunshine Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Re: Sunshine Complaint #12001
Library Users Association v. Arts Commission

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #12001, submitted on January 13, 2012 by Library Users Association, and received by our office on January 27, 2012.

The complaint says the following:

"Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2-Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority."

On December 15, 2011, Mr. Peter Warfield of Library Users Association submitted an e-mail request for the following:

- "1. Filled-out Speaker cards for the (a)Arts Commission meetings; and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).
2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."



CITY AND COUNTY OF
SAN FRANCISCO

Sunshine Task Force re: Sunshine Complaint #12001
Library Users Association v. Arts Commission

February 6, 2012
Page 2

On December 19, 2011, I replied to his request by e-mail with the explanation that there were no speaker cards responsive to his request number 1, and I supplied pdf copies of speaker cards for the following meetings in response to his request number 2:

full Commission September 12, 2011
full Commission November 16, 2011
Visual Arts Committee August 17, 2011
Visual Arts Committee October 19, 2011

I further explained that there were no cards for any of the other meetings he had requested. To protect the individuals' right to privacy under the California Constitution, Article I, Section 1, I blocked out any personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. I also advised Mr. Warfield that paper copies of the same documents were at our front desk for him to pick up at his convenience.

For your convenience, we are enclosing a copy of the e-mail messages referred to above.

Finally, please be advised that the Arts Commission has revised the design of its speaker cards to remove the line for the speaker's address.

Very truly yours,

Sharon Page Ritchie
Commission Secretary

spr

cc: Tom DeCaigny, Director of Cultural Affairs
Encl: E-mail from Library Users Association, December 15, 2011 and reply from Sharon Page Ritchie, San Francisco Arts Commission, December 19, 2011

Page Ritchie, Sharon

From: Page_Ritchie, Sharon
Sent: Monday, December 19, 2011 11:37 AM
To: 'libraryusers2004@yahoo.com'; Beltran, JD
Cc: Krell, Rebekah
Subject: RE: Immediate Disclosure Request - Speaker Cards, additional dates
Attachments: September_12_2011_comment_cards.pdf; VAC Public Comment Cards Aug-Dec 2011.pdf; November_16_2011_comment_cards.pdf

In response to your request below, there are no speaker cards responsive to your request number 1 below.

In response to your request number 2 below, I am attaching copies of speaker cards for the following meetings:
 full Commission September 12, 2011
 full Commission November 16, 2011
 Visual Arts Committee August 17, 2011
 Visual Arts Committee October 19, 2011

There are no speaker cards for any of the other meetings you have requested.

Hard copies of these cards are waiting for you at the front desk of the Arts Commission office. You may pick them up at your convenience during regular business hours.

In response to your voicemail this morning, requesting times to listen to recordings of meetings (copies of which have been supplied to you), available times are today, Monday, December 19 from 2:30 to 3:30, or tomorrow, Tuesday, December 20 from 2:30 to 3:30. Please let me know when you expect to come in.

Please note that the Arts Commission offices will be closed during the entire week of December 26 and the City holiday of Monday, January 2, 2012.

Sharon Page Ritchie
 Commission Secretary
 San Francisco Arts Commission
 415/252-2591

Website: <http://www.sfartscommission.org>
 e-newsletter: <http://sfartscommission.org/newsletter>
 Twitter: <http://www.twitter.com/SFAC>
 Facebook: <http://www.facebook.com/sfartscommission>
 YouTube: <http://www.youtube.com/ArtsCommission>
 Flickr: <http://www.flickr.com/photos/sfac>

From: Library Users Association [mailto:libraryusers2004@yahoo.com]
Sent: Thursday, December 15, 2011 3:48 PM
To: Beltran, JD
Cc: Page_Ritchie, Sharon
Subject: Immediate Disclosure Request - Speaker Cards, additional dates

Dear Ms. Beltran:

A. Library Users Association would like to inspect, at your offices, the following:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September,

October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

If there are no speaker cards for a particular date, please provide a blank speaker card for that date.

Please provide these on a rolling basis, if necessary.

B. We would also like to receive these electronically as well.

Please note that a few of the speaker card copies recently supplied for December 5 and 12, 2011 are difficult or impossible to read, so we would like to see the originals of those, as well as the ones above, at a future visit to the department.

Thank you for your attention to this.

Sincerely,

Peter Warfield
Executive Director
Library Users Association
415/753-2180



Sunshine Complaint
complaints

to:

sotf

01/13/2012 08:58 AM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:

PUBLIC RECORDS_VIOLATION:Yes

PUBLIC MEETING_VIOLATION:No

MEETING_DATE:

SECTIONS_VIOLATED:

DESCRIPTION:Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2- Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority.

HEARING:Yes

PRE-HEARING:No

DATE:1/13/2012

NAME:Library Users Association

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No

File No. 12001SOTF Item No. 4
CAC Item No. _____**SUNSHINE ORDINANCE TASK FORCE**
AGENDA PACKET CONTENTS LISTSunshine Ordinance Task Force (SOTF)Date: December 5, 2012Compliance and Amendments Committee (CAC)

Date: _____

CAC/SOTF

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memorandum
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Order of Determination
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint and Supporting documents
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Respondent's Response
<input type="checkbox"/>	<input type="checkbox"/>	Minutes
<input type="checkbox"/>	<input type="checkbox"/>	
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OTHER

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<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea Ausberry Date November 27, 2012

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

April 5, 2012

DATE THE DECISION ISSUED

March 7, 2012

LIBRARY USERS ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO. 12001)

FACTS OF THE CASE

Complainant Library Users Association alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by improperly redacting contact information on speaker cards responsive to a public records immediate disclosure request made on December 15, 2011.

COMPLAINT FILED

On January 13, 2012, Peter Warfield of the Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the SFAC alleging violations of Sunshine Ordinance public records provisions.

HEARING ON THE COMPLAINT

On March 7, 2012, Peter Warfield appeared before the Task Force and presented the Library User Association's complaint. Respondent SFAC was represented by Public Information Officer Kate Patterson, who presented SFAC's response.

On December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office.

On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the Library Users Association that information had been redacted or provided justification for the redactions.

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

Ms. Patterson stated that the SFAC redacted personal contact information from the speaker cards to protect individuals' rights to privacy pursuant to the California Constitution, Article 1, Section 1. She explained that the City Attorney's Office has advised the SFAC to redact personal contact information. She further explained the SFAC does not want to risk being the subject of a lawsuit for releasing personal information provided by members of the public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

In addition, the Task Force found that the SFAC failed to provide the Library Users Association with justification for withholding information at the time the speaker cards were produced.

The Task Force also concluded that the SFAC would benefit the public by placing language on speaker cards that notifies members of the public they are not required to complete a speaker card to speak during a public meeting.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information.

The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Manneh)

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

Absent: 1 - Cauthen
Excused: 2 - Chan, Wolfe
Recused: 0



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant
Kate Patterson, Arts Commission, Respondent
Tom DeCaigny, Director of Cultural Affairs, Arts Commission
Jerry Threet, Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNs
Deputy City Attorney

Direct Dial: (415) 554-3970
Email: michael.karns@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force
FROM: Michael Karns
Deputy City Attorney
DATE: March 2, 2012
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

BACKGROUND

Complainant Library Users Association ("Complainant") alleges that the San Francisco Arts Commission ("Commission") failed to provide documents responsive to their December 15, 2011 public records request.

COMPLAINT

On January 13, 2012, Complainant filed this complaint against Commission, without specifying which provision of the Ordinance it believed had been violated.

JURISDICTION

Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against Commission. Commission does not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.20(b) defines "public information".
- Section 67.21 governs responses to a public records request.
- Section 67.25 governs immediacy of response.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6252(e) defines "public record".
- Section 6253 governs the release of public records and the timing of responses.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts

On December 15, 2011, Complainant sent a request for documents to Commission via email. Complainant's email is quoted, in relevant part, here:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, November of 2009 (two years ago).

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 2, 2012
PAGE: 2
RE: Complaint 12001 - Library Users Association v. SF Arts Commission

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."

On December 19, 2011, Commission replied to this request via email with an explanation that speaker cards responsive to request #1, those from Arts Commission meetings and Visual Arts Committee meetings of September, October, and November 2009), did not exist. Commission also provided, at this time and over email, PDF copies of speaker cards from the September 12, 2011 and November 16, 2011 Arts Commission meetings, as well as speaker cards from the August 17, 2011 and October 19, 2011 Visual Arts Committee meetings, in response to Complainant's request #2. Commission also explained that no cards for any of the other meetings requested were in existence.

As part of Commission's response, Commission redacted certain information from the speaker cards before providing them to Complainant. Complainant alleges that no explanation was given for the redactions when the documents were produced.

On or about December 20, 2011, Complainant visited the Arts Commission offices to inspect the speaker cards in person. Complainant alleges that during this inspection, it realized that certain information had been redacted. Complainant alleges that when it asked for the reason for the redaction, only then was it informed that the speaker cards contained confidential personal address information. Specifically, Commission informed Complainant at that time that to protect the privacy interests of those who spoke at the meetings, personal address information for the speakers was redacted. Commission further informed Complainant that if the address information listed was a business address, it was not redacted. Complainant alleges that no explanation for the redactions was provided at the time the original response was made.

In its reply to Complainant's complaint to the Task Force, Commission does not dispute that certain personal address information was redacted from the speaker cards before they were provided to Complainant. Commission argues that such redaction is necessary "to protect the individuals' right to privacy under California Constitution, Article 1, Section 1." Commission also states in its reply to the Task Force that it has revised the design of its speaker cards to remove the line for the speakers address, thereby avoiding the necessity of redaction of this information in the future.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the nature and extent of the search the Department conducted with regard to documents responsive to Complainant's December 15, 2011 request?
- Did Commission's email response on December 19, 2011 contain any assertion that certain information had been redacted from the speaker cards?
- Did Commission's email response on December 19, 2011 contain any justification for why certain information on the cards had been redacted?

LEGAL ISSUES/LEGAL DETERMINATIONS:

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Ordinance Task Force
DATE: March 2, 2012
PAGE: 3
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

- If the Commission's email response on December 19, 2011 did not contain any assertion of or justification for the redaction of certain information from the speaker cards, did this omission constitute a violation of §67.27 of the Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

JOHN ELLERREY
DIRECTOR OF
CULTURAL AFFAIRS

PROGRAMS

CHINESE ART COLLECTION
CIVIL DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PUBLIC ART
STREET ARTISTS' LICENSES
S.F. COMMISSION GALLERY
407 VAN NESS AVENUE
415.554.6080

WWW.SFAC.COM/TRANSITIONING

ARTS@SFBAY.GOV

May 29, 2012

RE: WRITTEN ORDER OF DETERMINATION OF APRIL 5, 2012 - LIBRARY USERS
ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO.12001)

Dear Honorable Members of the Sunshine Ordinance Task Force:

I am writing in response to the Written Order of Determination of April 5, 2012 in which the Sunshine Ordinance Task Force (SOTF) found the:

SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information... The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

While we acknowledged that our response to this Written Order of Determination was delayed, we are writing to reiterate our position that we acted appropriately by redacting the personal information of those individuals who filled out speaker cards at past commission meetings.

At the May 15, 2012 SOTF committee meeting, Ms. Patterson, acting as a representative for the San Francisco Arts Commission (SFAC), apologized to Mr. Warfield and the committee members for the agency's oversight in providing a written response to this order within the required timeframe and failing to attend the Compliance and Amendments Committee meeting on April 17, 2012.

Herein lies the SFAC's official response to the Written Order of Determination of April 5, 2012 regarding the redaction of personal information from meeting speaker cards requested by Mr. Warfield on January 13, 2012.

In the SFAC's December 19, 2011 email response to Mr. Warfield's request for:

1. Filled-out speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).
2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

The SFAC explained that there were no speaker cards responsive to his request number 1, and we supplied pdf copies of speaker cards for the following meetings in response to his requests number 2:



CITY AND COUNTY OF
SAN FRANCISCO

Full Commission September 12, 2011
Full Commission November 16, 2011
Visual Arts Committee August 17, 2011
Visual Arts Committee October 19, 2011

We further explained that there were no cards for any of the other meetings he had requested, and that to protect the individuals' right to privacy under the California Constitution, Article 1, Section 1, we redacted the personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. We also provided Mr. Warfield with paper copies of the same documents.

At the SOTF meeting on March 7, 2012, Ms. Patterson testified that under the advice of the agency's City Attorney the SFAC acted appropriately in redacting the personal information of the individuals who filled out the speaker cards citing the individuals' right to privacy under the California Constitution, Article 1, Section 1.

The SOTF found the SFAC in violation as follows:

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(e) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

Today, despite the SOTF finding, the SFAC maintains that it acted appropriately by redacting the personal information of those who filled out speaker cards at past commission meetings, because at the time it was unclear to both the SFAC and the individuals in question that they would be waiving their Constitutional rights of privacy by participating in the Commission meeting by filling out residence information on a card.

At no point did the SFAC's speaker cards include information alerting the individual to the fact that once handed to the commission that his/her private information would be of public record. The SFAC has since modified its speaker cards so that it does not ask for one's personal address and it now includes a disclaimer that reads as follows: "You are not required to complete this card in order to make a public comment, and you may speak anonymously, if you wish."

Consistent with the federal and state constitutional provisions protecting the right of individuals to privacy, and consistent with the Sunshine Ordinance and Public Records Act, the Arts Commission properly withheld the private home address information of citizens who submitted public comment at the Arts Commission's meetings.

The "Findings and Purpose" section of the Sunshine Ordinance makes clear that the Sunshine Ordinance was not intended to eliminate or interfere with privacy rights. Specifically, Section 67.1(g) states that "[p]rivate entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected." S.F. Admin. Code 67.1(g). The Public Records Act, likewise, was adopted by the Legislature in the spirit of being "mindful of the right of individuals to privacy." Cal. Gov't Code Sec. 6250.

Section 6254(k) of the California Public Records Act permits an agency to decline to disclose "[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k). Article I, Section 1 of the California Constitution, in turn, protects a citizen's right to privacy and classifies such a right as an "inalienable" right. That provision states that "[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (emphasis added). Cal. Const., Art. I, Sec. 1. In addition, the Public Records Act allows an agency to decline to disclose "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Cal. Gov't Code Sec. 6254(c). Thus, the Arts Commission, as a City agency, may not make disclosures that violate a citizen's right to privacy.

Courts have held one's residence and phone number to be private. In *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 494-501 (1994) ("*Dep't of Defense*"), the United States Supreme Court held that the home addresses of federal employees are exempt from disclosure to unions under the privacy exemption in the Freedom of Information Act (FOIA). The California Public Records Act is modeled on the FOIA and the judicial construction and legislative history of the federal act guide the interpretation of the California Act. *A.C.L.U. v. Denkmajian* 32 Cal.3d 440, 447 (1982). The FOIA, like the Public Records Act, exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The Court found that employees have some "non-trivial privacy interest in nondisclosure" of their home address information and "in avoiding the influx of [unsolicited] union-related mail ... telephone calls or visits, that would follow disclosure." *Dep't of Defense*, 510 U.S. 487, 488. Accordingly, the Court was "reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions." *Id.* at 501. The Court found that the individual privacy interest in nondisclosure of home address information was "far from insignificant" especially "when we consider that other parties, such as commercial advertisers and solicitors, must have the same access" to such information under FOIA. *Id.*

Similarly, in *Sheet Metal Workers v. Dep't of Veteran Affairs*, the court found that workers hired to help renovate a veterans hospital had a significant privacy interest in the nondisclosure of their names and addresses. *Sheet Metal Workers v. Dep't of Veteran Affairs* 135 F.3d 891, 904 (3d Cir. 1998). The court stated that the "significant privacy concerns attached to the home and employees' interest in avoiding a barrage of unsolicited [mail, telephone or personal] contact weighs heavily in our consideration." *Id.* In a different context involving citizen complaints to a city about a municipal airport, the court also found that those citizens had significant privacy interests in their home addresses and telephone numbers and that public disclosure of such information would have a chilling effect on future complaints. *City of San Jose v. Superior Court*, 74 Cal.App.4th 1008, 88 Cal. Rptr. 2d 552, 555 (1999).

Although home addresses and telephone numbers are often publicly available through telephone directories or similar services, that fact does not eliminate an individual's privacy interest in such information. The Supreme Court has noted that the privacy interest encompasses an individual's control of information concerning his or her person and that "an individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." *Dep't of Defense*, 510 U.S. at 500.

Here, individuals who submitted private residence information on the old version of the Arts Commission's comment card for purposes of making public comment at an Arts Commission meeting have not surrendered their rights to privacy in providing such information. They should not be deemed to have waived their rights to privacy simply because they included their residence information on a public comment card. Indeed, members of the public may speak anonymously. Simply put, disclosing the private residence information of individual members of the public who attend or speak at the Arts Commission meetings neither sheds light on, nor enhances the public's understanding of, the operations of the Arts Commission. As we have previously explained, the Arts Commission has updated its comment cards to clarify that individuals may speak anonymously and that they are not required to complete a public comment card, or provide any specific identifying information, in order to make public comment.

In sum, where the disclosure of a record would violate a citizen's privacy rights, the Public Records Act and the Sunshine Ordinance do not require such disclosure.

Sincerely,

Kate Patterson
Public Relations Manager

cc: Director of Cultural Affairs Tom DeCaigny, Commission Secretary Sharon Page-Ritchie,
Peter Warfield



Today's Agenda -- #12001 -- Arts Commission has sent nothing regarding Follow-up on
Order of Determination
Library Users Association

to:

sotf

05/15/2012 10:22 AM

Cc:

SharonPage_Ritchie, TomDeCaigny, JD.Beltran

Please respond to libraryusers2004

Show Details

SOTF Administrator: Please forward to each SOTF member, including particularly the Compliance and Amendment Committee members, and copy us when you do so.

Thank you.

Dear SOTF and Arts Commission: --

For Your Information: Following up on SOTF's March 7, 2012 finding of violations on Library Users Association Complaint # 12001 concerning unlawful redaction of speaker card information by the Arts Commission:

LIBRARY USERS ASSOCIATION HAS HEARD NOTHING AND SEEN NOTHING FROM THE ARTS COMMISSION REGARDING THIS MATTER. Consequently we believe the Arts Commission to be in continuing violation of the law, despite the Order Of Determination document, which is dated April 5, 2012 and was presumably sent to all parties.

FYI, We also alerted the SOTF Administrator about this by telephone yesterday.

Sincerely yours,

Peter Warfield
Executive Director
Library Users Association
415/775 3-2180

5/15/2012



SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE
MAYOR

TOM DECAIGNY
DIRECTOR OF
CULTURAL AFFAIRS

PROGRAMS

CIVIC ART COLLECTION
CIVIC DESIGN REVIEW
COMMUNITY ARTS
& EDUCATION
CULTURAL EQUITY GRANTS
PUBLIC ART
STREET ARTISTS LICENSING

ARTS COMMISSION GALLERY
401 VAN NESS AVENUE
415.554.4080

RECEIVED
SAN FRANCISCO ARTS COMMISSION
JAN 27 2012

February 6, 2012

Honorable Members
Sunshine Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Re: Sunshine Complaint #12001
Library Users Association v. Arts Commission

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #12001, submitted on January 13, 2012 by Library Users Association, and received by our office on January 27, 2012.

The complaint says the following:

"Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2-Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority."

On December 15, 2011, Mr. Peter Warfield of Library Users Association submitted an e-mail request for the following:

1. Filled-out Speaker cards for the (a)Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).
2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."



CITY AND COUNTY OF
SAN FRANCISCO

Sunshine Task Force re: Sunshine Complaint #12001
Library Users Association v. Arts Commission

February 6, 2012
Page 2

On December 19, 2011, I replied to his request by e-mail with the explanation that there were no speaker cards responsive to his request number 1, and I supplied pdf copies of speaker cards for the following meetings in response to his request number 2:

full Commission September 12, 2011
full Commission November 16, 2011
Visual Arts Committee August 17, 2011
Visual Arts Committee October 19, 2011

I further explained that there were no cards for any of the other meetings he had requested. To protect the individuals' right to privacy under the California Constitution, Article I, Section 1, I blocked out any personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. I also advised Mr. Warfield that paper copies of the same documents were at our front desk for him to pick up at his convenience.

For your convenience, we are enclosing a copy of the e-mail messages referred to above.

Finally, please be advised that the Arts Commission has revised the design of its speaker cards to remove the line for the speaker's address.

Very truly yours,

Sharon Page Ritchie
Commission Secretary

spr

cc: Tom DeCaigny, Director of Cultural Affairs

Encl: E-mail from Library Users Association, December 15, 2011 and reply from Sharon Page Ritchie, San Francisco Arts Commission, December 19, 2011

Page Ritchie, Sharon

From: Page_Ritchie, Sharon
Sent: Monday, December 19, 2011 11:37 AM
To: 'libraryusers2004@yahoo.com'; Beltran, JD
Cc: Krell, Rebekah
Subject: RE: Immediate Disclosure Request - Speaker Cards, additional dates
Attachments: September_12_2011_comment_cards.pdf; VAC Public Comment Cards Aug-Dec 2011.pdf; November_16_2011_comment_cards.pdf

In response to your request below, there are no speaker cards responsive to your request number 1 below.

In response to your request number 2 below, I am attaching copies of speaker cards for the following meetings:

full Commission September 12, 2011

full Commission November 16, 2011

Visual Arts Committee August 17, 2011

Visual Arts Committee October 19, 2011

There are no speaker cards for any of the other meetings you have requested.

Hard copies of these cards are waiting for you at the front desk of the Arts Commission office. You may pick them up at your convenience during regular business hours.

In response to your voicemail this morning, requesting times to listen to recordings of meetings (copies of which have been supplied to you), available times are today, Monday, December 19 from 2:30 to 3:30, or tomorrow, Tuesday, December 20 from 2:30 to 3:30. Please let me know when you expect to come in.

Please note that the Arts Commission offices will be closed during the entire week of December 26 and the City holiday of Monday, January 2, 2012.

Sharon Page Ritchie
Commission Secretary
San Francisco Arts Commission
415/252-2591

Website: <http://www.sfartscommission.org>
e-newsletter: <http://sfartscommission.org/newsletter>
Twitter: <http://www.twitter.com/SFAC>
Facebook: <http://www.facebook.com/sfartscommission>
YouTube: <http://www.youtube.com/ArtsCommission>
Flickr: <http://www.flickr.com/photos/sfac>

From: Library Users Association [mailto:libraryusers2004@yahoo.com]
Sent: Thursday, December 15, 2011 3:48 PM
To: Beltran, JD
Cc: Page_Ritchie, Sharon
Subject: Immediate Disclosure Request - Speaker Cards, additional dates

Dear Ms. Beltran:

A. Library Users Association would like to inspect, at your offices, the following:

1. Filled-out Speaker cards for the (a)Arts Commission meetings, and (b) Visual Arts Committee meetings of September.

October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

If there are no speaker cards for a particular date, please provide a blank speaker card for that date.

Please provide these on a rolling basis, if necessary.

B. We would also like to receive these electronically as well.

Please note that a few of the speaker card copies recently supplied for December 5 and 12, 2011 are difficult or impossible to read, so we would like to see the originals of those, as well as the ones above, at a future visit to the department.

Thank you for your attention to this.

Sincerely,

Peter Warfield
Executive Director
Library Users Association
415/753-2180



Sunshine Complaint
complaints

to:

soff

01/13/2012 08:58 AM

Hide Details

From: <complaints@sfgov.org>

To: <soff@sfgov.org>

To:soff@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:

PUBLIC RECORDS_VIOLATION:Yes

PUBLIC MEETING_VIOLATION:No

MEETING DATE:

SECTIONS VIOLATED:

DESCRIPTION:Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2- Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority.

HEARING:Yes

PRE-HEARING:No

DATE:1/13/2012

NAME:Library Users Association

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY_REQUESTED:No



Today's Agenda -- #12001 -- Arts Commission has sent nothing regarding Follow-up on Order of Determination

Patterson, Kate

to:

libraryusers2004@yahoo.com

05/16/2012 02:02 PM

Cc:

SOTF, "Page_Ritchie, Sharon", "DeCaigny, Tom"

Show Details

Dear Mr. Warfield,

As I stated yesterday, we apologize for not responding to you sooner regarding this matter. Our City Attorney is in the process of reviewing our official response to the Written Order of Determination from April 5, 2012. As soon as I have the final draft I will forward it to you and the members of the Sunshine Ordinance Task Force.

Thank you for your patience.

Sincerely,

Kate Patterson
Public Relations Manager
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
T: 415-252-4638
F: 415-252-2595

[Website](#) | [e-Newsletter](#) | [Twitter](#) | [Facebook](#) | [YouTube](#) | [Elickr](#)

From: Library Users Association <libraryusers2004@yahoo.com>

Date: May 15, 2012 10:23:36 AM PDT

To: SOTF <sotf@sfgov.org>

Cc: "Page_Ritchie, Sharon" <sharon.page_ritchie@sfgov.org>, "DeCaigny, Tom"

<tom.decaigny@sfgov.org>, "Beltran, JD" <jd.beltran@sfgov.org>

Subject: Today's Agenda -- #12001 -- Arts Commission has sent nothing regarding

Follow-up on Order of Determination

Reply-To: "libraryusers2004@yahoo.com" <libraryusers2004@yahoo.com>

SOTF Administrator: Please forward to each SOTF member, including particularly the Compliance and Amendment Committee members, and copy us when you do so.

Thank you.

Dear SOTF and Arts Commission: --

For Your Information: Following up on SOTF's March 7, 2012 finding of violations on Library Users Association Complaint # 12001 concerning unlawful redaction of speaker card information by the Arts Commission:

LIBRARY USERS ASSOCIATION HAS HEARD NOTHING AND SEEN NOTHING FROM THE ARTS COMMISSION REGARDING THIS MATTER. Consequently we

believe the Arts Commission to be in continuing violation of the law, despite the Order Of Determination document, which is dated April 5, 2012 and was presumably sent to all parties.

FYI, We also alerted the SOTF Administrator about this by telephone yesterday.

Sincerely yours,

Peter Warfield
Executive Director
Library Users Association
415/753-2180

5/17/2012

000038

March 07, 2012 - Draft

Select Language ▼

SUNSHINE ORDINANCE TASK FORCE
CITY AND COUNTY OF SAN FRANCISCO
Draft MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

March 7, 2012 – 5:00 PM

Rescheduled Meeting

Members: Chair Hope Johnson, Vice-Chair Bruce Wolfe,
David Snyder, Richard Knee, Sue Cauthen, Suzanne Manneh,
Allyson Washburn, Jay Costa, Hanley Chan, Jackson West

1. Call to Order, Roll Call, and Agenda Changes. (00:00:01 – 00:04:47)

The meeting was called to order at 5:17 p.m. Vice Chair Wolfe, Members Cauthen, Costa, and Chan were noted absent. There was a quorum. Member Costa was noted present at 5:40 p.m.

Member Knee, seconded by Member Washburn, moved to EXCUSE Vice Chair Wolfe and Member Chan.

Public comment: Jason Grant Garza spoke against the motion. Patrick Monette Shaw spoke in support of the motion.

The motion PASSED without objection.

2. Discussion of Survey of Costs of Compliance with City Sunshine Ordinance (00:24:33 – 1:27:06)

Task Force members discussed the Controller's survey of City agencies and departments, requested by Supervisor Scott Wiener, of costs of compliance with San Francisco's Sunshine Ordinance.

Member Washburn, seconded by Member Knee, moved that the Chair send a letter to Supervisor Wiener, on behalf of the Task Force, acknowledging the survey, expressing concern with the secrecy of the survey request, requesting clarification of motive and expected benefits, expressing concern with the survey instrument, offering input, and inviting Supervisor Wiener to attend a meeting to discuss the survey.

Public comment: Patrick Monette-Shaw; Thomas Picarello; Ray Hartz, Director, San Francisco Open Government; Peter Warfield, Executive Director, Library Users Association; and Hal Smith spoke in support of the motion.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

3. File No. 11090: Determination of jurisdiction on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:16 – 1:31:47)

Member Knee, seconded by Member Washburn, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

4. File No. 11090: Hearing on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:48 - 2:49:10)

Complainant Patrick Monette-Shaw provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Monique Zmuda, Deputy Controller, provided an overview of the Controller's response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent did not provide a rebuttal. Complainant provided a rebuttal and again requested the Task Force to find violation.

Respondent stated the data requested by complainant existed in raw form and would require many hours to generate accurately in report form. The parties agreed to work to resolve the request with alternate data.

Member Snyder, seconded by Member Washburn, moved to CONTINUE THE MATTER TO THE CALL OF THE CHAIR.

Public comment: Ray Hartz, Jr., San Francisco Open Government, asked if program used to provide information to San Francisco Chronicle columnists Matier and Ross was still available. Peter Warfield inquired as to the purpose for the postponement of the item and for what result.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

RECESS

The Task Force reconvened at 8:19 p.m.

5. File No. 11095: Determination of jurisdiction on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the Task Force's regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

6. File No. 11095: Hearing on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

7. File No. 11096: Determination of jurisdiction on complaint filed by Arnita Bowman against the Department of Parks and Recreation for allegedly not providing requested documents and delayed response. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

8. File No. 11096: Hearing on complaint filed by Arnita Bowman against the Department of Parks and Recreation for

allegedly not providing requested documents and delayed response. (00:04:48 – 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

9. File No. 11097: Determination of jurisdiction on complaint filed by Charles Plitts against the Police Department for allegedly not providing requested information. (Discussion and Action) (00:06:20 – 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

10. File No. 11097: Hearing on complaint filed by Charles Plitts against the Police Department for allegedly not providing requested information. (00:06:20 – 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

11. File No. 11098: Determination of jurisdiction on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:06 – 3:08)

Member Knee, seconded by Member Washburn, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

12. File No. 11098: Hearing on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:08 – 4:07)

Complainant Ray Hartz, Jr. provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent was not present. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Deputy City Attorney Michael Karns responded to questions from Task Force members. Complainant provided a rebuttal and again requested the Task Force to find violation.

Member Washburn, seconded by Member Knee, moved (1) to find Luis Herrera in violation of Sunshine Ordinance Sections 67.16 and 67.21(e) for failure to include the 150-word summary of the Complainants's comments in the Library Commission meeting minutes and the Respondent's failure to appear at this hearing, and (2) refer the matter to Compliance and Amendments Committee.

Public comment: Peter Warfield, Executive Director, Library Users Association, said the Task Force should find that the Respondent committed a willful violation.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

000042

RECESS

The Task Force reconvened at 9:25 p.m.

13. File No. 12001: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:12 - 4:13)

Member Knee, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

14. File No. 12001: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:13 - 5:17)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Arts Commission response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Member Washburn, seconded by Member Manneh, moved (1) to find the Arts Commission in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond in a timely manner, 67.26 for failure to keep withholding to a minimum by providing unredacted speaker cards, and 67.27 for failure to justify withholding the redacted information; and (2) to refer the matter to Compliance and Amendments Committee.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

15. File No. 12002: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:17 - 5:18)

Member Knee, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

16. File No. 12002: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:18 - 5:42)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force to find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Agency's defense and requested the Task Force to dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Respondent provided documentation demonstrating the Arts Commission has revised the language on its speaker cards to notify members of the public they are not required to submit speaker cards in order to speak at meetings.

000043

Due to lack of a motion, the Task Force FOUND NO VIOLATION. MATTER IS CONCLUDED.

17. File No. 12003: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 - 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

18. File No. 12003: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 - 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

19. General Public Comment: (00:10:07 - 00:24:32 and 1:27:07 - 1:30:53)

A member of the public expressed concerns about the Library Commission splitting off 150-word comment summaries from their minutes. Patrick Monette-Shaw expressed concerns about his complaint pending at the Ethics Commission. Peter Warfield, Executive Director, Library Users Association, thanked the Task Force for changing the Task Force meeting day to Wednesday, and expressed concerns about the Library. Jason Grant Garza expressed concerns about what he termed lack of progress in handling complaints he has filed. Thomas Picarello expressed concerns about Jason Grant Garza's complaints, and suggested that Task Force meetings commence at 5:00 p.m. Ray Hartz, Jr. expressed various concerns.

20. Administrator's Report (5:44 - 5:45)

The Administrator's Report was reviewed.

Public comment: Peter Warfield suggested that more information be listed in the compliant log.

21. Announcements, Comments, Questions, and Future Agenda Items (5:45 - 5:46)

There were none.

22. ADJOURNMENT (5:46 - 5:47)

Member Knee, seconded by Member Manneh, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Task Force adjourned at 11:00 p.m.

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION REGULATIONS FOR VIOLATIONS OF THE SUNSHINE ORDINANCE

Effective Date: January 25, 2013

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CHAPTER ONE

I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code section 54950, et seq.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.

J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).

O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

CHAPTER TWO

I. REFERRALS TO THE ETHICS COMMISSION

A. Matters to be heard in a Show Cause Hearing.

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:
 - a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or
 - b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.
2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

B. Scheduling of Show Cause Hearing.

1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.
2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

II. SHOW CAUSE HEARING

A. Public Hearing. The Show Cause Hearing shall be open to the public.

B. Standard of Proof. The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

C. Hearing Procedures.

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

D. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

E. Ethics Commission Orders.

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

- a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or
- b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or
- c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

F. Public Announcement.

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

CHAPTER THREE

I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR DEPARTMENT HEADS OR COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.

A. Matters heard under this Chapter.

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.
2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.
3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.
4. This Chapter will govern:
 - a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and
 - b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.
5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

B. Scheduling of Hearing.

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

II. INVESTIGATION AND RECOMMENDATION

A. Factual Investigation.

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

B. Subpoenas.

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

C. Report and Recommendation.

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

a. that Respondent(s) willfully violated the Sunshine Ordinance;

b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or

c. that Respondent(s) did not violate the Sunshine Ordinance.

D. Response to the Report and Recommendation.

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

III. PUBLIC HEARING

A. General Rules and Procedures.

1. The hearing shall be open to the public.

2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.

5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

B. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.
3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

C. Ethics Commission Orders.

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:
 - a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
 - b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
 - c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

CHAPTER FOUR

I. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

C. Oaths and Affirmations.

The Commission may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

E. Extensions of Time and Continuances.

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

F. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.
2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.
3. Delivery is effective upon the date of delivery, not the date of receipt.
4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

G. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

H. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

II. SEVERABILITY

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

DRAFT



SAN FRANCISCO ETHICS COMMISSION

CONTRIBUTOR GUIDE

A Guide to Local Laws

Governing Campaign Contributions

June 2013

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, California 94102
Phone: (415) 252-3100
Fax: (415) 252-3112
Website: www.sfethics.org
E-Mail: ethics.commission@sfgov.org

I. INTRODUCTION

The San Francisco Ethics Commission (the "Commission") was established by the voters in 1993 to administer and implement the provisions of the Charter and City ordinances relating to campaign finance, lobbying, conflicts of interest, and governmental ethics. One of the Commission's duties is to educate members of the public about local laws governing campaign contributions.

This guide summarizes the local laws applicable to campaign contributions, including contribution limits, who may make contributions to committees, and required reporting by contributors and committees. This guide is for informational purposes only, and does not have the force or effect of law or regulation.

The discussion of the campaign finance laws in this guide is necessarily general, to provide readers a basic understanding of the laws. Any specific questions regarding these laws or their application should be directed to the Commission staff at (415) 252-3100. You may also visit the Commission's website at www.sfethics.org. The website includes general information about the Commission, as well as the laws it enforces.

We hope you find this guide helpful and look forward to assisting you in the future.

II. WHAT IS A CONTRIBUTION?

What is a contribution?

A contribution is a monetary or non-monetary payment made to a candidate or committee for which no goods, services, or other consideration of equal value is provided to you in return. CA Gov't Code § 82015. In San Francisco, a contribution includes a loan of any kind or nature. S.F. Campaign and Governmental Conduct ("C&GC") Code § 1.104(g).

A contribution includes:

- A payment in the form of money or non-monetary items;
- A loan of any kind or nature;
- Forgiveness of a loan;
- A payment of a loan by a third party;
- An enforceable promise to make a payment for political purposes.

What is a monetary contribution?

A monetary contribution is:

- A check written to a campaign committee;
- Cash given to a campaign committee (may not exceed \$99.99);
- A credit card charge made to a campaign committee;
- A loan made to a campaign committee;
- An enforceable promise to make a payment to a campaign committee.

What is a non-monetary contribution?

A non-monetary contribution or "in-kind" contribution is a good or service provided to a campaign committee.

Typical non-monetary examples include:

- Food, beverages, flowers, and decorations donated to a campaign committee;
- Printing or mailing costs donated by a printer;
- An expenditure made at the behest of a candidate;
- A discount or rebate that is not generally extended to the public;
- The transfer of anything of value to a campaign committee without full consideration provided in return;
- The reproduction, broadcast, or distribution of any material belonging to a candidate.

III. ARE THERE LIMITS ON CONTRIBUTIONS?

Yes. In San Francisco, no person other than a candidate may make, and no campaign treasurer for a candidate committee for City elective office may solicit or accept, any contribution that will cause the total amount contributed by the person to the candidate committee in an election to exceed \$500. In addition, no person may make a contribution that will cause his or her total amount of contributions to all candidate committees in an election to exceed \$500 multiplied by the number of City elective offices to be voted on in that election. There are other limits, as set forth below.

**What is a
City elective
office?**

A City elective office is one of the following offices:

- Mayor,
- Member of the Board of Supervisors,
- City Attorney,
- District Attorney,
- Treasurer,
- Sheriff,
- Assessor/Recorder,
- Public Defender,
- Member of the Board of Education of the San Francisco Unified School District, or
- Member of the Governing Board of the San Francisco Community College District

**How much
may you
contribute to
a candidate
for City
elective
office?**

You may contribute up to \$500 to a candidate for City elective office.

Note, however, that the total amount of contributions you may make in an election cannot exceed \$500 multiplied by the number of City elective offices to be voted on in the election. For example, in November 2013, four offices are up for election: Assessor/Recorder, City Attorney, Treasurer, and District 4 of the Board of Supervisors. The total amount you may contribute to all candidates for City elective office in the November 5, 2013 election is 4 x \$500, or \$2,000.

**Is there a
limit on
contributions
to a non-
candidate
committee?**

No. Local law does not limit the amount of contributions you may make to a non-candidate committee.

**May you
make a
contribution
in cash?**

Yes, as long as the contribution is *under* \$100.00.

Campaign committees may accept cash contributions of \$99.99 or less. This includes money orders and cashier's checks.

Please note that a campaign committee that receives \$100 in a cash contribution may not make change to the contributor so as to bring the contribution down to under \$100.

**May you
make a
contribution
from both
your
personal and
business
funds?**

It depends. Your total contributions may not exceed the contribution limits.

For the purposes of the contribution limits, contributions from affiliated entities are aggregated. This means that contributions of an entity (such as a business) whose contributions are directed and controlled by an individual are added to the contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

Example: Larry Smith is the sole proprietor and 100% owner of Smith Company. Larry contributed \$500 from his personal account to Simon Seal, a candidate for Sheriff. Larry received an invitation to Seal's next fundraiser, which includes a five-course dinner cruise around the bay. Tickets to the fundraiser cost \$500. Can Larry use funds from Smith Company's business account to pay for the ticket to the fundraiser?

Answer: No. Because Larry already donated the maximum amount to Seal from his personal account, neither Larry nor any entity of which he is the majority-owner may contribute any additional money to Seal. Accordingly, because Larry is the sole proprietor and 100% owner of Smith Company, and Smith Company does not act independently in making contribution decisions, neither he nor Smith Company may purchase the ticket to Seal's fundraiser.

**May your
child make a
contribution?**

It depends.

A contribution made by children under the age of 18 is presumed to be a contribution from the child's parent or guardian, and is counted toward the \$500 limit of the parent or guardian.

**May you
make a
contribution
from a joint
checking
account?**

Yes.

If you make a contribution with a check that has the names of more than one person printed on it, the contribution will be attributed to the person whose name is printed on the check and who also signed the check.

**May you
make a loan
to a
campaign
committee?**

Loans (other than a candidate's personal loans) are contributions and are subject to the same limits and disclosure requirements as other types of contributions.

**May you
make a
contribution
if you are a
contractor
with the
City?**

City law bans persons who are seeking or recently entered into government contracts from making contributions to certain candidates for City elective office. The ban applies when:

- (1) the City, a state agency on whose board an appointee of a City elective officer serves, the Unified School District, or the Community College District is a party to the contract,
- (2) the contract or series of contracts in the same fiscal year has a total anticipated or actual value of \$50,000 or more in a fiscal year, and
- (3) the City elective officer, a board on which that officer serves, or the board of a state agency on which the officer's appointee serves must approve that contract or series of contracts.

The ban applies to:

- any party or prospective party to the contract,
- the contracting party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer,
- any person with an ownership interest of more than 20 percent in the contracting party,
- any subcontractor listed in the contract, and
- any committee that is sponsored or controlled by the contracting party.

Contractors and their affiliates may not make contributions from the start of negotiations on the contract until negotiations are terminated or six months after the contract is approved. The ban applies not only to City elective officers who must approve the contract but also to candidates for those offices.

**May a
corporation
make a
campaign
contribution?**

Corporations, whether for profit or not, may not make contributions to candidates for City elective office.

However, a corporation may establish, administer and solicit contributions to a separate segregated fund to be used for political purposes by the corporation; such a fund must comply with the requirements of federal law.

A corporation may make contributions to non-candidate committees.

A Limited Liability Company may make a contribution to a candidate committee if it is taxed as a partnership. Otherwise, the LLC is treated as a corporation and is subject to the ban on contributions by corporations to candidates.

IV. WHAT INFORMATION MUST YOU PROVIDE AS A CONTRIBUTOR?

**What
information
must you
provide as a
contributor
to a
campaign
committee?**

If you contribute \$25 or more, you must provide the following information to the committee:

- Your name, and
- Your street address.

If the cumulative amount of your contribution is \$100 or more, you must provide the following information to the committee:

- Your name,
- Your street address,
- Your occupation, and
- Employer information. (If you are self-employed, you must provide the name of your business.)

V. WHAT OTHER IMPORTANT INFORMATION SHOULD YOU KNOW?

What else must you know when making a contribution?

- It is important that you make contributions only in your name. Contributors may not make contributions in someone else's name or reimburse another individual for a contribution that they have made. If you are asked to make a contribution in someone else's name or to be reimbursed for a contribution, please contact the Ethics Commission.
- If your contributions to candidates or ballot measures or other types of committees total \$10,000 or more in a calendar year, you must file a Major Donor Committee Campaign Statement (Form 461). The deadline and location for filing this statement will depend upon the timing and type of contribution(s) you have made. Once you become a major donor, you must file a late contribution report within 24 hours if you make contributions totaling \$1,000 or more to a single candidate or committee during the last 90 days before the election.

VI. ARE YOU SUBJECT TO PENALTIES IF YOU VIOLATE A CAMPAIGN FINANCE RULES?

What happens if you violate the law?

If you knowingly or negligently violate a provision of the San Francisco Campaign Finance and Governmental Conduct Code, you may be subject to an administrative enforcement action and monetary penalties up to \$5,000 per violation or three times the amount which you failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

VII. WHAT IF YOU HAVE ADDITIONAL QUESTIONS?

How can you
obtain
additional
information?

As noted, this guide is intended to answer the most frequently asked questions about laws applicable to campaign contributions under local law.

Please do not hesitate to contact the Ethics Commission for advice or information. We can help you avoid mistakes and prevent violations of the law. We can be reached at (415) 252-3100 on Monday-Friday 8 AM – 5 PM except during City holidays, or at ethics.commission@sfgov.org when you need assistance or direction. You can also visit our web site at www.sfethics.org for a host of information.

You may also contact the California Secretary of State at (916) 653-6814, the San Francisco Department of Elections at (415) 554-4375, or the California Fair Political Practices Commission at (866) 275-3772.

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ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

MICHELLE S. STUDLEY
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Regular Meeting of June 24, 2013

1. Budget.

On June 4, the Mayor issued his proposed budget for the upcoming fiscal years. Under the proposal, the Commission's budget is \$4,356,950 in FY 2013-2014, which includes \$1,903,559 for the Election Campaign Fund (ECF); and \$4,449,444 in FY 2014-2015, which includes \$1,906,395 for the ECF. On June 17, the Budget and Finance Committee approved the proposed operating budget for the Ethics Commission for FY 13/14 of \$2,453,391. This represents an increase of \$197,152 over this year's budget. The funds for the ECF are mandated by statute and do not require BOS approval.

2. Investigation and enforcement program.

As of June 18, 2013, there are 24 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	10
Conflict of Interest	9
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	3
TOTAL	24

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on January 31, 2013 for the Second Semi-Annual statement, which covers the reporting period ending December 31, 2012. The next filing deadline that applies to all campaign filers is July 31, 2013 for the First Semi-Annual Statement, which covers the reporting period ending June 30, 2013.

Due to recent changes to the Campaign Finance Reform Ordinance and Ethics Commission regulations (anticipated to take effect on June 21, 2013), all committees must now file electronic statements and complete the electronic signature requirements. Staff has informed treasurers and candidates about the new requirements and has provided detailed instructions. Staff continues to inform and assist committees during this transition.

b. Collection of late filing fees and contribution forfeitures. In the FY12-13, as of June 18, the Commission collected a total of \$46,084.25 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$16,423.84, of which waiver requests are pending for \$210; and \$6,659 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	2,658.90	\$2,658.90	2,658.90
						TOTAL	\$6,659

4. Revenues report.

For FY 12-13, the Commission was budgeted to generate \$100,000 in revenues. As of June 15, 2013, the Commission received \$123,979 as summarized below. The figure represents collection of approximately 123 percent of expected revenues for FY 12-13.

Revenues received as of June 15, 2013:

Source	Budgeted Amount FY 12-13	Receipts
Lobbyist Fees	\$27,000	\$48,575
Other Ethics General	\$1,000	\$113
Campaign Finance Fines	\$50,000	\$46,084
Campaign Consultant Fees	\$18,000	\$7,950
Lobbyist Fines	\$1,000	\$600
Statements of Economic Interests Fines	\$1,000	\$5,580
Other Ethics Fines	\$1,000	\$14,477
Campaign Consultant Fines	\$1,000	\$600
Unallocated	\$0	\$0
Total	\$100,000	\$123,979

5. Lobbyist program.

As of June 18, 2013, 86 individual lobbyists were registered with the Commission. Total revenues collected to date are \$49,175, including \$48,575 in lobbyist registration fees and \$600 in late fines. The filing deadline for the next lobbyist disclosure statement is July 15, 2013.

6. Campaign Consultant program.

As of June 18, 2013, 20 campaign consultants were registered with the Commission. \$7,950 in registration fees and \$600 in fines have been collected so far during the 2012-2013 fiscal year. The next campaign consultant quarterly report deadline is Monday, September 16, 2013. Staff will send reminders to all active campaign consultants two weeks before the deadline.

7. Statements of Economic Interests.

As of June 17, 2013, 617 filers have filed their Form 700 statements (including annual, leaving office or assuming office statements) with the Commission. Staff continues to process and post forms on the Commission's website.

As of June 17, 2013, there were 17 non-filers who have not filed their Form 700 (including annual, leaving office or assuming office statements) with the Commission. If their forms are not received by June 20, 2013, staff will refer their non-filing status to the Fair Political Practices Commission's (FPPC) enforcement division for investigation and possible prosecution.

As of June 17, 2013, there were 37 non-filers who have filed neither Sunshine Ordinance Declaration nor Certificate of Ethics Training forms with the Commission, 32 non-filers who have not filed Certificate of Ethics Training forms with the Commission, and 27 non-filers who have not filed Sunshine Ordinance Declaration forms with the Commission. On June 17, 2013, staff sent notices to these non-filers to inform them that they need to file with the Commission immediately.

7. Outreach and Education.

Staff conducted a training session on May 1, 2013 for candidates and their treasurers about campaign finance requirements, the voluntary expenditure ceilings applicable to each race (City Attorney, Treasurer, Assessor/Recorder) and the public financing program applicable to candidates for the District 4 seat on the Board of Supervisors.

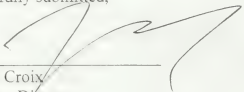
The Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training
- SIA Template Language Training

8. Meeting of California ethics agencies.

On June 11, 2013, Ethics Commission staff met with staff members from the Fair Political Practices Commission, the Los Angeles Ethics Commission, San Diego Ethics Commission and Oakland Ethics Commission. Throughout the day-long meeting in Sacramento, staff from the different agencies learned and exchanged ideas about the FPPC's new gift reporting app, upcoming and recent legislative and regulatory developments, enforcement matters and education programs. It was a very fruitful gathering.

Respectfully submitted,



John St. Croix
Executive Director

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Minutes of the Regular Meeting of
The San Francisco Ethics Commission
June 24, 2013
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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I. Call to order and roll call.

Chairperson Hayon called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Beverly Hayon, Chairperson; Paul A. Renne, Vice-Chairperson; Brett Andrews, Commissioner; Benedict Y. Hur, Commissioner; Jamiene S. Studley, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Joshua White, Deputy City Attorney (DCA).

OTHERS PRESENT: Sue Blackman; Ray Hartz; Kate Patterson; Glenn Rogers; Peter Warfield; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Hearing – Ethics Complaint 02-120402, dated June 17, 2013;
- Report and Recommendation Ethics Commission Complaint No. 02-120402 and supporting documents;
- Staff Memorandum re: Hearing – Ethics Complaint 01-130307, dated June 17, 2013;
- Report and Recommendation Ethics Commission Complaint No. 01-130307 and supporting documents;
- Staff Memorandum re: Show Cause Hearing – Ethics Complaint, dated June 17, 2013, and supporting documents;
- Ethics Commission Regulations for Violations of the Sunshine Ordinance;
- Sunshine Ordinance;
- Draft Contributor Guide;
- Draft minutes of the Commission's Special Meeting of May 20, 2013;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Newly appointed Commissioner, Brett Andrews, introduced himself to his fellow Commissioners and to the members of the public.

Ray Hartz stated that he would rather be at home reading a good book than at Commission meetings, but that it is important to exercise his rights. He stated that the Ethics Commission had

recommended that Library Board President, Jewelle Gomez, be removed from her position, and Mayor Lee has not done anything about that recommendation. Mr. Hartz stated that Ms. Gomez threatened him and that the threats were recorded.

Peter Warfield stated that Sunshine Ordinance Task Force referrals to the Ethics Commission should be represented by the Task Force as the complainant. He stated that the Task Force is in the best position to explain the reasoning behind its findings. He stated that the Ethics Commission was called a "sleeping watchdog," but the Executive Director is not sleeping when he wants to protect the guilty. He stated that the Executive Director incorrectly defined the Task Force referral regarding the Arts Commission, as a case naming Mr. Warfield as the complainant. He stated he did not have a complaint against an Arts Commission staffer, but against the department, and the Department Head should be held responsible.

III. Discussion and possible action on matters submitted under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance.

a) Ethics Complaint No. 02-120402 regarding alleged willful violation of Sunshine Ordinance by elected officials (referred from the Sunshine Ordinance Task Force on April 2, 2012)

Executive Director St. Croix introduced the item and informed the Commission that the complainant had requested a continuance. He stated that this was the complainant's third request for continuance. He also stated that none of the four respondents were in attendance.

Commissioners Hur and Studley suggested that the matter should be continued as none of the parties appeared.

Commissioner Renne stated that if another continuance is granted, it should be the last one granted for any party.

Executive Director St. Croix stated that if a continuance is granted, the Commission should state so on the record by motion.

After discussion amongst the Commission members, they agreed to grant a continuance.

Public Comment:

Ray Hartz stated that the complainant has been homeless and cannot receive health care so it is unreasonable for the Commission to request a doctor's note to grant a continuance. He stated that the Commission dragged its feet for a decade on Sunshine Ordinance matters and that it is now saying that it is terrible to delay the resolution of this matter. He stated that the Commission sided with the City 98 percent of the time regarding Sunshine Ordinance complaints.

Peter Warfield stated that the complainant in this matter is a serious person who has devoted herself to many important issues. He stated that he does not know the specifics regarding the request for a continuance, but that the Commission should ask her how she would like to proceed.

Glen Rogers stated that it will be difficult to contact the complainant by mail if she is homeless.

Motion 13-06-24-01 (Hur/Studley): Moved, seconded, and passed (5-0) that the Commission continue possible action on the matter to the Commission's September 23, 2013 meeting, with no further continuances granted on this matter absent a good cause showing by either side.

b) Ethics Complaint No. 01-130307 regarding alleged willful violation of Sunshine Ordinance by department head (referred from the Sunshine Ordinance Task Force on March 7, 2013)
Complainant: Ray Hartz
Respondent: Luis Herrera, City Librarian, San Francisco Public Library

Executive Director St. Croix introduced the item and reviewed the hearing procedure.

Ray Hartz presented his case. He stated that the Task Force has found that 150-word written summaries must be placed within the body of the minutes. He stated the Report and Recommendation is inaccurate by referencing that the Task Force has not issued a statement to City departments regarding its determination. He stated that reliance on the Good Government Guide is misplaced, because it is not the law. He stated that the Sunshine Ordinance is the law, and the Task Force has made its determination regarding where the written summaries should be placed in the minutes.

Sue Blackman, representing Luis Herrera, presented her case. She stated that the Commission already made a determination on a similar case regarding another set of minutes, and that it determined that placing the written summaries at the end of the minutes was acceptable and consistent with advice from the City Attorney. She stated that the Library Commission has followed the Ethics Commission's lead and started placing the summaries in the minutes at the place where the member of the public made public comment.

Mr. Hartz presented his rebuttal. He stated that it is not true the Library Commission adopted the new policy as to where the summaries will be placed. He stated that the policy could be changed arbitrarily.

The Commission discussed the factual and legal issues and asked both Mr. Hartz and Ms. Blackman several questions regarding the matter.

After discussion, Commissioner Studley stated that she concluded that there was no violation of Sunshine Ordinance, section 67.16, because the written summaries appeared in the minutes and that placing the summaries in an addendum that is part of the same document satisfies the requirements of section 67.16.

Public Comment:

Peter Warfield stated that the Library Commission has a long history of omitting discussions in the minutes that occurred during a meeting, and have discussed changing the minutes format to

"action minutes." He stated that the minutes often don't reflect what a speaker said, and sometimes reflects the opposite of what the speaker said.

Motion 13-06-24-02 (Studley/Hur): Moved, seconded, and passed (5-0) that City Librarian Luis Herrera did not violate the Sunshine Ordinance because the 150-word summaries submitted by Complainant and others were included in the minutes of the Library Commission's meetings, as required under Administrative Code section 67.16.

IV. Discussion and possible action on matters submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance.

- a) **Ethics Complaint No. 02-130307 (referred from the Sunshine Ordinance Task Force on March 7, 2013)**
Complainant: The Library Users Association
Respondent: San Francisco Arts Commission

Executive Director introduced the item and reviewed the hearing procedure.

Kate Patterson presented her case. She stated that she did fail to respond in time. She stated that personal addresses and phone numbers were redacted from speaker cards to protect the privacy of members of the public.

Peter Warfield presented his case. He stated that the hearing procedure for this matter is an outrage. He stated that it is being conducted as if he personally complained against Kate Patterson, which he did not. He stated that the Department Head should be held responsible, and that the matter should be re-heard.

Vice-Chairperson Renne stated that under this procedure, the Task Force findings are presumed correct, so there is no burden on Mr. Warfield to prove a violation.

Ms. Patterson, responding to Commissioner Hur, stated that she was not aware of the reason that the Arts Commission asked for an address on speaker cards, but that the address line no longer appears on the cards. She also stated that she is not the custodian of all records in the department, but that she was responsible for this records request.

Mr. Warfield, responding to Commissioner Hur, stated this violation is part of multiple violations by the Arts Commission. He stated that the department did not provide a justification for each redaction, and it is incumbent on the public official to explain why information is being withheld. He stated that he does not believe personal addresses are private and subject to being withheld, and that neither the Public Records Act, nor Sunshine Ordinance allow for the redaction of personal addresses.

Commissioner Studley stated that she was concerned about whether Ms. Patterson was the right person to be named as the respondent. The Commission members discussed how staff identified who were the complainant and respondent.

Vice-Chairperson Renne stated that he is troubled that the Task Force appears to disregard advice by the City Attorney, and is not clear where the Task Force gets its authority to overrule advice by the City Attorney. Mr. Warfield responded that the Sunshine Ordinance provides that authority.

The Commission members discussed the legal and factual issues regarding the issue of responding in a timely manner.

Public Comment:

Ray Hartz stated that the Task Force is authorized to advise and provide information regarding compliance to the Sunshine Ordinance. He stated that the City Attorney must provide a legal justification for advice issued by that office. He stated that the Department Head is ultimately responsible to ensure that staffers comply with the Ordinance. He stated that it common for departments to send low-level employees to avoid culpability by the Department Head

Motion 13-06-24-03 (Studley/Andrews): Moved, seconded, and passed (5-0) that Respondent Kate Patterson/San Francisco Arts Commission failed to respond in a timely manner to an immediate disclosure request from Complainant

Commissioner Renne questioned Ms. Patterson regarding the redactions. She responded stating that only personal addresses and email addresses were redacted. She stated that she consulted with the City Attorney's Office to determine what to redact.

Responding to Commissioner Andrews, Mr. Warfield stated that there was no justification provided regarding the reason for the redactions.

The Commission members discussed the legal and factual issues regarding the section 67.26 violation.

Public Comment:

Ray Hartz stated that redactions must be done based on a legal justification and that justification needs to be cited. He stated that the City Attorney provides this advice without writing anything down, and that these determinations by the City Attorney should be in legal memos.

Motion 13-06-24-04 (Hur/Studley): Moved, seconded, and passed (5-0) that Respondent Kate Patterson/San Francisco Arts Commission, by not providing appropriate notice and justification, failed to comply with Sunshine Ordinance section 67.26 in making their redactions on the speaker cards requested by Complainant.

The Commission members engaged in a discussion regarding what authority the Ethics Commission has to determine if the privacy interests were accurately determined by the Arts Commission.

DCA White stated that the Ethics Commission could make that determination.

Responding to Commissioner Andrews, Ms. Patterson stated that the City Attorney's Office provided the legal research cited in the Arts Commission's response to the allegations.

The Commission discussed the legal and factual issues regarding the redactions.

Public Comment:

Ray Hartz stated that if the Ethics Commission determines that addresses are private, then would a public official who releases that information be liable of disclosing such addresses. He stated that this subjects his privacy interests to the whim of whoever received a records request.

Glenn Rogers stated that he does not believe personal addresses are private.

Commissioner Hur clarified that there is a difference between saying an address is inherently private and what is being determined on these facts. He stated that there is no broad determination being made on the privacy of addresses.

Motion 13-06-24-05 (Hur/Studley): Moved, seconded, and passed (5-0) that Respondent Kate Patterson/San Francisco Arts Commission met the burden of establishing that the redacted records need not be publicly disclosed in an unredacted fashion.

Motion 13-06-24-06 (Hur/Renne): Moved, seconded, and passed (5-0) that Respondent Kate Patterson/San Francisco Arts Commission met their burden of establishing that there was no willful failure to comply with the Sunshine Ordinance.

V. Discussion possible action on a draft "Contributor Guide," which provides information about local laws governing campaign contributions.

Executive Director St. Croix introduced the item.

Deputy Executive Director Ng made corrections to typographical errors.

Commissioner Andrews stated that the guide should identify that a corporation can be for-profit or a non-profit.

Commissioner Hur stated that legal citations should be included.

Public Comment:

None.

Motion 13-06-24-07 (Renne/ Hur): Moved, seconded, and passed (5-0) that the Ethics Commission approve the Contributor Guide to Local Laws Governing Campaign Contributions, as amended.

VI. Discussion and possible action on the minutes of the Commission's special meeting of May 30, 2013.

Deputy Executive Director Ng made corrections to typographical errors.

Public Comment:

None.

Motion 13-06-24-07 (Studley/ Hur): Moved, seconded, and passed (5-0) that the Ethics Commission approve minutes for the Special Meeting of May 30, 201, as amended.

VII. Discussion of the Executive Director's Report.

Executive Director St. Croix presented the monthly report.

Public Comment:

None.

VIII. Items for future meetings.

Chairperson Hayon stated that this meeting would be Commissioner Studley's last, and she thanked Commissioner Studley for her service and dedication to the Commission.

Commissioner Studley thanked her fellow Commissioners, both past and present, and staff. She stated that she was very happy to have served on the Commission.

Public Comment:

None.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Public Comment:

None.

X. Adjournment.

Public Comment:

None.

The meeting adjourned at 9:35 PM.



